MONTANA LEGISLATIVE HISTORY

Chapter 645 19 91

Bill H _____ S 407 Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Local Government		
Hearing Date(s)	4/1	✓ C	Hearing Date(s)	2/19	✓ C
	4/2	✓ C		2/21	✓ C
		C		3/7	✓ C
		C		3/12	✓ C
Date Out	4/10	✓ C		3/14	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/16	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/21	HEARING		
2/23	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
2/23	ADVERSE COMMITTEE REPORT ADOPTED	35	13
2/25	RECONSIDERED ADOPTION OF ADVERSE COMMITTEE REPORT	36	14
2/26	2ND READING DO PASS AS AMENDED MOTION FAILED	11	38
2/26	2ND READING INDEFINITELY POSTPONED	41	8

SB 407 INTRODUCED BY WATERMAN, ET AL.

CLARIFY THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"

BY REQUEST OF DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES

2/15	INTRODUCED		
2/16	FISCAL NOTE REQUESTED		
2/16	FIRST READING		
2/16	REFERRED TO LOCAL GOVERNMENT		
2/19	HEARING		
2/22	FISCAL NOTE RECEIVED		
2/26	FISCAL NOTE PRINTED		
3/13	TABLED IN COMMITTEE		
3/14	TAKEN FROM TABLE		
3/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/19	2ND READING PASSED AS AMENDED	27	21
3/20	3RD READING PASSED	36	13
	TRANSMITTED TO HOUSE		
3/21	FIRST READING		
3/21	REFERRED TO NATURAL RESOURCES		
4/01	HEARING		
4/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/12	2ND READING CONCURRED	61	37
4/13	3RD READING CONCURRED	65	31
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS CONCURRED	49	0
4/18	3RD READING AMENDMENTS CONCURRED	49	0
4/23	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 645	EFFECTIVE DATE: 10/01/91	

SB 408 INTRODUCED BY KEATING

REVISE THE LAWS RELATING TO COMMUNITY MENTAL HEALTH SERVICES

BY REQUEST OF DEPARTMENT OF INSTITUTIONS

2/16	FISCAL NOTE REQUESTED		
2/16	INTRODUCED		
2/16	FIRST READING		
2/16	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/20	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/22	FISCAL NOTE PRINTED		
2/22	FISCAL NOTE RECEIVED		
2/23	2ND READING PASSED	49	0
2/25	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO HUMAN SERVICES & AGING		
3/14	HEARING		

Senate BILL NO. 407

INTRODUCED BY [signatures]

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTRATIVELY ENFORCE THE LAWS PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION OF APPROVAL ISSUED UNDER THOSE LAWS; PROVIDING FOR ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS; ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO RECEIVE REVENUES FROM FEES, ADMINISTRATIVE PENALTIES, AND CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ESTABLISHING A SANITATION IN SUBDIVISIONS SPECIAL REVENUE ACCOUNT TO RECEIVE REVENUES FROM FEES RECEIVED PURSUANT TO THIS ACT; AMENDING SECTIONS 75-6-102, 75-6-103, 75-6-104, 75-6-111, AND 76-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE."

LC 1185/01

STATEMENT OF INTENT

A statement of intent is provided for this bill because rulemaking authority is delegated to the board of health and environmental sciences to prescribe procedures for administrative enforcement actions undertaken by the department of health and environmental sciences in administering the public water supply laws, as provided in Title 75, chapter 6, and to develop a fee schedule to enable the department to recover costs in administering these laws. Rulemaking authority is also delegated to the department to develop fees to pay for costs of reviewing plats and subdivisions under the laws related to sanitation in subdivisions, as provided in Title 76, chapter 4.

The legislature anticipates that the department will expand its enforcement activity in order to address ongoing and increasing health problems with public water supply systems and public sewage systems in Montana. In undertaking this effort, the legislature expects that the department will have the option to pursue administrative enforcement as a means of expediting and encouraging compliance with Title 75, chapter 6. Nonetheless, it is the department's duty to clearly inform each violator of:

(1) the nature of the action taken against it;

(2) what the department requires to resolve the matter;

INTRODUCED BILL
SB 407

and

(3) what legal avenues are available to the violator if he desires to contest the matter.

The rules also require the board of health and environmental sciences to develop fees for recovery of costs incurred by the department in delivering services to persons who own or operate or intend to own or operate a public water supply system or public sewage system. These costs include costs associated with review of engineering plans and specifications, inspections, and general assistance. To assist the board in developing these rules, the department shall prepare and submit to the board a detailed estimate of projected costs associated with these services for fiscal years 1992 and 1993. The board shall develop a fee schedule that will provide revenues that are commensurate with the projected costs. A similar approach should be used by the department in developing rules setting new fees for review of plats and subdivisions under 76-4-105.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental

sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Drainage" means rainfall, surface, and subsoil water.

(5) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(7) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(8) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(9) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(10) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

(11) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(12) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

(13) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(14) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground."

Section 2. Section 75-6-103, MCA, is amended to read:

"75-6-103. **Duties of the board.** (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in [section 4], for services rendered by the department ~~in conducting inspections~~;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

~~(g)~~(h) the collection and analysis of samples of water used for drinking or domestic purposes;

~~(h)~~(i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part; ~~and~~

(j) administrative enforcement procedures and administrative penalties authorized under this part; and

~~(i)~~(k) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 3. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a

municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in [section 4], for services ~~rendered--in--analyzing---water---and---conducting inspections--to--cover--costs-of-the-service~~ and deposit the fees collected in the ~~state~~ public drinking water special revenue fund ~~for--use--by--the--department~~ established in

[section 8];

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part."

NEW SECTION. **Section 4. Board to prescribe fees.** (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system must be based on the number of connections to the public water supply system, although the minimum fee for any

system is $100.

(2) The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(3) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in [section 8].

Section 5. Section 75-6-111, MCA, is amended to read:

"**75-6-111. Appeal from rule or standard -- injunction to require compliance.** (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in [section 6]. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in [section 7]."

NEW SECTION. **Section 6. Administrative enforcement.** (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time, which must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or [section 7].

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds

that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or [section 7].

(6) An action initiated under this part may include an administrative penalty not to exceed $1,000 for each day of violation. Administrative penalties collected under this section must be deposited in the public drinking water special revenue fund established in [section 8].

NEW SECTION. **Section 7. Civil penalty.** (1) A person who violates this part or a rule, order, or condition of approval issued under this part is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate

remedy.

(4) Civil penalties collected pursuant to this section must be deposited in the public drinking water special revenue fund established in [section 8].

NEW SECTION. **Section 8. Public drinking water special revenue fund.** (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102. There are established in the public drinking water special revenue fund an operator training account and a public drinking water program account.

(2) There must be credited to:

(a) the operator training account all administrative and civil penalties collected under [sections 6 and 7]; and

(b) the public drinking water program account, all revenues from fees assessed and collected pursuant to [section 4].

(3) Funds from the operator training account may be used only to finance public water supply system and public sewage system operator training programs.

(4) Funds from the public drinking water program account may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

Section 9. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees -- general fund support. (1) The

department shall adopt rules setting forth fees, that do not ~~to~~ exceed ~~$40 per parcel, for services rendered in the review of~~ actual costs to the department in reviewing plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the ~~state general fund~~ sanitation in subdivisions special revenue account established in [section 10] or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees between the local governing body and the ~~state general fund~~ sanitation in subdivisions special revenue account established in [section 10], as provided in 76-4-128. When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval

under the Montana Subdivision and Platting Act, distribute the lot fees according to the fee schedule adopted under this section.

(3) When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of $5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs.

(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(5) Costs of implementing this part must be paid from the state general fund as provided by legislative appropriation and from the sanitation in subdivisions special revenue account established in [section 10]."

NEW SECTION. **Section 10. Sanitation in subdivisions special revenue account.** (1) There is a sanitation in subdivisions special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be credited to the sanitation in subdivision special revenue account all fees collected under 76-4-105 and all penalties collected under 76-4-109.

(3) Funds from the sanitation in subdivisions special revenue account may be used only to pay department costs in reviewing plats and subdivisions.

NEW SECTION. **Section 11. Codification instruction.** (1) [Sections 4, 6, 7, and 8] are intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [sections 4, 6, 7, and 8].

(2) [Section 10] is intended to be codified as an integral part of Title 76, chapter 4, and the provisions of Title 76, chapter 4, apply to [section 10].

NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0407 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws regarding public water supply systems and the duties of the Department of Health and Environmental Sciences; providing for assessment of fees relating to public water supplies and to sanitation in subdivisions; and establishing public drinking water and sanitation in subdivisions special revenue accounts.

ASSUMPTIONS:

1. A fee of $3.00 per water service connection per year would be assessed to water supply systems with a minimum fee of $100 assessed for public water systems with less than 33 connections. Total revenue generated would be approximately $600,000 per year.
2. A fee of $500 would be charged for engineering review of approximately 250 sets of plans and specifications, generating approximately $125,000 per year.
3. Approximately $10,000 per year would be collected in administrative and civil penalties.
4. 1.00 FTE (grade 9, step 2) would be required for processing and collection of fees from approximately 2,100 public water supply systems. This FTE was requested in the executive budget and was approved in appropriations subcommittee action to date.
5. The department intends to draft rules which would increase the existing subdivision review fees by approximately 200%, covering approximately 75% of program costs as requested in the executive budget. Grants to counties for subdivision review would be increased by 200%.

FISCAL IMPACT:

see next page

2-22-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/26/91

MIGNON WATERMAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0407, as introduced.

SB 407

CHAIRMAN--ESTHER BENGTSON
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: T,TH,S TIME: 3:00 P.M.

SECRETARY-JOYCE INCHAUSPE-CORSEN

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0261	2/04	2/12		PASS AS AMENDED		2/15
LYNCH, J.D.			REVISE LAW RELATING TO CONSOLIDATED GOV'T & MUNICIPAL WATER SUPPLY SYSTEMS			
SB0276	2/06	2/14		PASS AS AMENDED		2/15
FRITZ, HARRY			PARTIAL SALARY FOR FIREFIGHTER INJURED IN PERFORMANCE OF DUTY			
SB0302	2/07	2/19		ADVERSE RPT ADOPT		2/22
BIANCHI, DON			GENERALLY REVISE LAWS RELATING TO COUNTY ROADS			
SB0305	2/07	2/19		DO PASS		2/22
ANDERSON, JR., JOHN			ALLOW MULTIJURISDICTIONAL SERVICE DISTRICT TO PROVIDE AMBULANCE SERVICE			
SB0328	2/08	2/14		TABLED ON 02/21		
PIPINICH, BOB			ALLOW COLLECTION OF SEWER AND WATER ASSESSMENTS WITH GENERAL TAXES			
SB0334	2/08	2/19		DO PASS		2/22
HARDING, ETHEL			REVISE PERSONAL LIABILITY FOR COUNTY OFFICIALS WHO EXCEED BUDGETS			
SB0367	2/13	2/19		DO PASS		2/20
CRIPPEN, BRUCE			AUTHORIZE PROPERTY TRANSFER TO YELLOWSTONE ART CENTER FOUNDATION			
SB0405	2/16	2/19		TABLED ON 02/19		
BLAYLOCK, CHET			INTERLOCAL COURT AGREEMENT			
SB0407	2/16	2/19		PASS AS AMENDED		3/18
WATERMAN, MIGNON			CLARIFY THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"			
SB0413	2/18	2/19		TABLED ON 02/21		
FRANKLIN, EVE			COST OF LIVING RATE INCREASES FOR MUNICIPAL UTILITIES			
SB0437	2/19	2/19		PASS AS AMENDED		2/22
BROWN, BOB			ALLOW LOCAL GOVERNMENT TO SET FEES FOR LAKE-RELATED CONSTRUCTION PERMITS			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Esther Bengtson, on February 19, 1991, at 3:25 p.m.

ROLL CALL

Members Present:
Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: none

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON SB-302

Presentation and Opening Statement by Sponsor: Senator Don Bianchi, District 39, stated that this bill basically does three things. There are some amendments that will clarify a few things. The problem that created this bill is access to public lands and is being debated across the state. There are lots of lawsuits filed. There are situations where people think they have a public right to a road, but are unsure. They go to the County Commissioners and the commissioners and County Attorney is not sure. This bill will clarify what in fact is a county road. Page 2 of this bill does not change existing law of what is a county road. It includes roads, by petition, by common

Closing by Sponsor: Senator Bengtson said the committee should be commended for this bill.

EXECUTIVE ACTION ON SB-440

Motion: Senator Waterman moved to Do Pass on SB-440. The committee voted unanimously, and the vote was recorded with a roll call vote.

HEARING ON SB-407

Presentation and Opening Statement by Sponsor: Senator Waterman, District 22, said that she sponsored this bill on behalf of the Department of Health and Environmental Sciences (DHES). She briefly stated what was in the bill. This bill arises from the Montana Public Water Supply Task Force, and she presented their report (Exhibit #17). Senator Waterman said that this bill had to do with Federal requirements for public water supply, and there are State of Montana requirements. Federal law states that where both federal and state requirements are very similar or the same, then the state can retain control. She had received a letter of support from the Rural Water Association reflected very closely the feelings of Montanans that it is important to have regulations administered by the state versus the federal government and EPA. The bill before provides for administrative enforcement orders, administrative and civil counties, authorizes the department to collect fees, authorizes the department to review new proposed public water systems for viability and general minimum design standards in subdivisions. The purpose of this is to cut down on the subdivision review time, and allow for a follow-up of plans. It would remove some things and fee structure would be changed. It would allow them to cover their costs. The subcommittee has discussed this when the DHES budget was reviewed. They proposed adding one FTE for that levy, providing it would be paid through increased fees for associations. This will be made clear through DHES testimony.

Proponents' Testimony: Jim Melstad, DHES, Water Quality Bureau, helped prepare Exhibit #17 as a member of the Governor's Task Force. He supported this bill and gave proposed amendments because they had not intented for this legislation to add subdivision fees to go elsewhere (Exhibit #18, 18A, 18B)

Erling Tufte, Director, Public Works in Great Falls, supported this bill and its general intent (Exhibit #19).

Ray Wadsworth, Montana Rural Water Systems, supported this bill, except Section 1, on behalf of this organization (Exhibit #20).

Pete Frazier, City-County Health Department, Great Falls, supported this bill (Exhibit #21).

Richard Nisbit, Director of Public Works, City of Helena, also representing the Montana Public Water Supply Task Force, as a member of that group. He asked the committee to support the task force recommendations and include in SB-407. The city of Helena is on record supporting the implementation of the task force's recommendation. The method of assessment will be presented in DHES public hearings before the board when they set the rates. We feel strongly that these recommendations should be implemented. His third hat, he is National Director for the American Water Works Association, and they support the implementation of the task force recommendations. They do not meet until next spring, so they are not on record for this bill. All these water groups will have the opportunity to testify during public hearings.

Chris Kaufmann, Montana Environmental Information Center (MEIC), was pleased to rise in support of SB-407. It is a growing public concern about the quality of drinking water. We hear it often. The state needs to be prepared to make a good and quick response to problems. There are some public water systems that are not currently meeting water quality standards. They also believe it is important for Montana to have primacy in most regulatory programs involving environmental and public health issues. It allows Montana to be more responsive to local communities, and to provide more technical assistance. She first noticed this bill because it has something to do with subdivision, which is a big issue of concern with MEIC. The importance of regulating water systems in new subdivisions is an important component in this bill, we want to support it.

Mr. Melstad presented three statements of support.
Jim Carlson, Director, DHES, Missoula City-County Health Department, faxed a letter of support (Exhibit #23).

Jane Lopp, Chairperson, Flathead City-County Board of Health, faxed a letter of support (Exhibit #24).

Gary Strumm, Montana Society of Engineers, and American Society of Civil Engineers/Montana Section, supported this bill (Exhibit

#25).

Opponents' Testimony: Bruce Mc Candles, Assistant City Administrator, Billings, said he hated to oppose the testimony of some of his city brethren, but he wanted to go on record. First the City of Billings supports the state of Montana primacy in administering the state drinking water quality act. So his testimony is not that much in opposition to what has been heard. He had to express great concern about the fee structure. If you notice in the bill, all the money for the programs proposed, are based upon the services to be provided by department personnel, with the exception of the Public Water Supply Chairman. That is to be based upon a flat fee. The flat fee is $3/service connection. $3/year/connection will provide 25 cents per month for service connection does not sound like much money. But when it is multiplied by the 25,000 service connections in the city of Billings, then it is $75,000/year and this is talking about real money. Secondly this is imposed through regulations with no cap imposed by the Legislature. We have some very serious concerns about that. He read a sentence from the Executive Summary, "however small water facilities, comprising over 96% of Montana's systems, will have the most difficult time meeting the requirements." Exactly so, but what that says is that conversely, 4% of the water systems will be paying the bulk of the fees to support the program. We do not feel this is appropriate. Billings is more than willing to pay the fees for the services that they receive. We recognize, as the largest water service system in the state, we are likely to help with the subsidization of the program for the smaller systems in the state. But we would like to see a fee structure that is a bit closer to the services provided being equal to the fees being charged. He also stated that there is some information about the staffing of the department, he is unable to locate the Fiscal Note on this bill. He urged the committee to examine it closely before their decision is made.

Questions From Committee Members:
Senator Beck asked where is the Fiscal Note? Senator Waterman said one was requested. Joyce Inchauspe-Corson informed the committee that the fiscal note was ordered on 2-16-91. The Secretary of the Senate said it was highly unlikely that the Fiscal Note would be available before this hearing. As of today, it is still not available. Senator Beck asked Senator Waterman about the use of broad language. Is there any limit, so that it can't exceed $5/hookup? He said it appears that these funds are being sent into a trust account, so we are not actually doing

service rendered, we are going to collect a fee, into an account that could grow? Senator Waterman referred the question to Mr. Melstad. Mr. Melstad said the fees that the task force recommended was $3/year as a maximum per connection, which is about 25 cents/month, and that is what they plan to stick with and not exceed, but that is not in the legislation. Senator Beck asked if it could be put in the bill? Senator Waterman said this was the appropriation, the budget is based on these fees, so they can not exceed it because it is in the budget. Senator Beck disagreed with that. This money is going into a special revenue account. Even if they budgeted, if that revenue account begins to grow, if there is no problem putting a maximum of $3/hook-up, they would satisfy their budget and us, why not put it in. Senator Waterman said she had no problem putting it in. Her concern is that this committee talks about not having to bring these things back to the Legislature for review all the time if the fees need to change. She did not know if this was something we want to put into the bill, and in the future years, when their budget needs to go up, they will need a bill to do this.

Senator Eck said the budget does reflect a spending authority based on these fees? Senator Waterman said correct. Senator Eck said if every two years as they review this kind of authority, the amount of fees would be a part of it. Senator Waterman said she thought next Legislative session, if the fund is building up, then the Legislative process would reduce it or the committee would have the opportunity to review this and force them to use this money.

Senator Bengtson said she supposed that would be the DHES budget under the Water Quality Bureau and all that money is appropriated. The money they spend in fees, whether it goes out in grants or training, etc., that would all be reviewed in the Appropriations process. Those fees would also be reviewed. Senator Waterman said these fees were discussed, and they also discussed the other concern. Two issues have been discussed. One is how the fees will be divided up between large v.s. small communities. And #2 will these funds be general fund dollars?

Senator Eck asked Senator Waterman, what is happening in the Subcommittee, and DHES in looking at what is required in reviewing the subdivision because in the past it has always been true, that the department has omitted that they have not asked for anywhere near what they needed to the job. They have not reviewed, haven't monitored, they are having terrible problems with pollution in the Flathead. Are you satisfied that they have asked and are getting the FTEs that they need to do the job? Senator Waterman said one of the Subcommittee concerns focused on

this issue. It is very apparent that the review process is inadequate, and lagging behind. That's why the additional FTE was approved in hopes there could be time cut from the process of going through this review process. There are concerns that expressed that the subdivision review process is taking too long. The other issue, DHES omitted, that they do not have adequate staff to go out and see if the recommendations for the water system from the review process were carried through. Someone filed a complaint about polluted water, did they find out the water system had not been done according to plan. We believe we have addressed that need with the additional FTE. We discussed the issue of fees versus general fund dollars.

Senator Eck asked the same question about subdivisions of Rick Duncan, Subdivision Program Director, WQB. Senator Eck asked if one new FTE will make a dent in the backlog that he has? Mr. Duncan said he was hoping it would. Right now, two people are reviewing all the subdivisions in the state of Montana. The economic conditions of the state vary year to year, and biennium to biennium. Some years have less minor and major subdivisions for review. This year to date,there are already more reviews than for the entire year two years ago for minor subdivisions. Some years things go quickly. The last couple of years, major subdivisions are pushing the 60 day limit because of the backlog.

Senator Hammond asked how many minor subdivisions/year? Mr. Duncan said last year there were approximately 840, and a minor subdivision is anything with 5 or less lots. Many are two lots. The year before was about 670 minor. This year we are already at 600 this fiscal year. Senator Hammond asked what they had to do for work in a minor subdivision? Mr. Duncan said the primary concerns are water supply, sewage disposal, and solid waste disposal. They also have concerns under the Montana Environmental Policy Act (MEPA). We have been recently informed that some form of an EIS for all subdivisions stating briefly the concerns of the MEPA have been addressed. Senator Hammond said Mr. Duncan is suppose to do this, but he wanted a picture of how much work this really entails? Mr. Duncan said the work varies. There are a number of local county health departments that are contracted with DHES to perform review of minor subdivisions. Each of those types of systems, most counties contract to review the basic well and septic system or the services through a public supply. These are fairly simple. Senator Hammond said the counties take care of this? Mr. Duncan said yes, and DHES has oversight responsibilities. He added, that in the major subdivision that handled all aspects of the review. Senator Hammond asked what was a major? Mr. Duncan said 6 lots or more is a major subdivision.

Senator Hammond questioned whether the counties don't take on 6 or more lots? Mr. Hammond said yes. Senator Hammond said he knew of a subdivision that was done just by correspondence, and the DHES never appeared on the scene. The county did 118 lots. Mr. Duncan said it was certainly possible with only two persons reviewing, this imposition hopefully free everyone up to be able to out and look at the sites of major controversial subdivisions. Senator Hammond asked about the cap on lots now would be removed? Mr Duncan said the level of funding for this year from general fund monies is about $130,000. The receipts last year were only $80,000. A portion of the receipts goes into general fund and a portion was reimbursed to local governments for their review work. The $130,000 provides for staffing of two FTE, an administrative assistant, assistants to the legal and administrative staff. We would like to raise or remove the cap on review fees to allow for an additional engineering position, so that those subdivisions requiring more technical review would have a person available for that review. It would also allow for field work to check that water systems that require engineering approval, have been put in according to the plans and specifications of DHES.

Senator Eck asked whether he was familiar with other states' review process, staffing, and time constraints and how Montana stands as far as efficiency? Mr. Duncan said his information is from the Subdivision Task Force done several years ago, and the Montana Subdivision Act compared favorably with other states with similar populations. Senator Iverson was Chair of the EQC, and several experts from the state presented information to the task force.

Senator Thayer asked if this bill was only for new hook-ups? Mr. Duncan said no, that it would be charged to all hook-ups. Senator Thayer asked how penalties would affect Butte Water? Mr. Melstad answered that currently there are only small criminal penalties, and they would have to go to court to get court order for a compliance schedule. This bill would allow a fine of $10,000/day to be assessed or $1000/offense similar to what is available in water pollution control programs nation wide. Our public water supply program needs to be brought up to a level of were the water pollution control program is for enforcement.

Senator Harding asked what would be done in small communities having problems, what kind of financing could they get? Mr. Melstad said this legislation does not address financing. Financing could be sought from Community Development Block Grants or the State Water Development. He added that Senator Max Baucus has proposed legislation to fund rural water systems with federal

funds. Senator Harding asked about penalties? Mr. Melstad said that penalties are unfortunate part of any regulatory program, and without penalties, regulations can not be enforced. Primacy is in this bill because we are not enforcing regulations. Senator Harding said she has heard testimony that there is not enough money to fund all of those systems, so where do small communities go? Mr. Melstad said those communities need to determine what their water is worth. Some places pay less for water than cable T.V.

Senator Thayer asked if the task force considered the millions of dollars needed to bring small communities up to standards? Mr Melstad said again, they are a regulatory agency. The task force was formed to address whether primacy should be kept in the state for enforcement of the drinking water act. If primacy is lost by the state, EPA will enforce the same rules and regulations with a lot more authority than we have. So in terms of enforcement, this legislation is not worse for Montana public water supplies, it tends to keep it in the state. Financing those systems and helping small communities is another matter. Unfortunate actions are not meant to be taken because they do not comply, and that is where assistance from the state can help those communities along the way.

Senator Hammond asked if he could see a community that knows its water is inadequate and they aren't trying to improve it? Mr. Melstad said some large communities are just put if off because they need large infrastructure improvements. It is a matter of councils and boards postponing those huge rate increases, so they are the dirty ones that raise the rates. The Big Sky Dividend addresses these needs for infrastructure work.

Closing by Sponsor: Senator Waterman closed by saying that she thought it was important that the federal regulations are coming and we need to retain primacy in enforcement. We can do it now, or let the Feds do it for us. It is critical to this now. The Federal regulations allows communities grace periods to come into compliance, and it is important to work towards this. The bottom line is we need to do it, the matter is who will enforce the regulations that will force Montana water systems to comply. This is a very important bill, and she urged a Do Pass on SB-407.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 17
DATE 2-19-91
BILL NO. SB-407

Report to DHES Governor Stephens the 1991 Legislature

prepared by the

MONTANA
Public Water Supply
Task Force

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 18
DATE 2-19-91
BILL NO. SB-407

MONTANA'S PUBLIC WATER SUPPLY (PWS) PROGRAM

PWS Program History

Montana has had a PWS program since 1907 when public health legislation was passed in response to deaths resulting from waterborne disease. In 1974, the first national drinking water legislation, the Safe Drinking Water Act (SDWA), was signed into law. The SDWA established minimum treatment and monitoring requirements for all public water supplies. The Montana Department of Health and Environmental Sciences (DHES) obtained "Primacy" from the Environmental Protection Agency (EPA) to enforce the SDWA in 1978, and has had responsibility for enforcing the law and associated regulations since then. There are approximately 2100 public water systems in Montana that are regulated under the SDWA.

In addition to enforcing the requirements of the 1974 SDWA, the Montana PWS program has for many years conducted state-mandated water supply and wastewater responsibilities. These include plan and specification review to insure minimum standards of construction, operator training and certification, sanitary surveys, technical assistance and emergency response. Montana's PWS program has always focused on training and preventive measures rather that enforcement. The PWS program has also recently combined with the subdivision review program to form one section within DHES.

1986 SDWA Amendments

In 1986, Congress amended the SDWA to require extensive changes in response to growing public concern over drinking water. The number of contaminants regulated will increase from 22 to approximately 180 in the year 2000. Other new requirements included stringent requirements for filtration of surface water supply systems, mandatory disinfection of all vulnerable water supply systems, greatly expanded monitoring and reporting for systems, more stringent public notification and more aggressive enforcement by the EPA. The 1986 amendments stipulated that these new requirements be phased in steadily as new regulations. These new regulations are about 50% completed, and their impacts are now beginning to be realized.

PWS Program Status

Because of the extensive new requirements of the new regulations and staff turnover, the program is not able to keep up legislative responsibilities. Most importantly, over 50% of the public water supplies are not meeting **current** standards for monitoring, reporting and/or for water quality. Limited resources, especially with respect to enforcement, are responsible for these problems and things will only get worse as more federal regulations are promulgated.

Early in 1990, EPA informed DHES that Montana will likely lose

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 18B
DATE 2-19-91
BILL NO. SB-407

January 18, 1991

TO: Senator Mignon Waterman

FROM: Dan L. Fraser, Water Quality Bureau

SUBJECT: DHES Legislation regarding Public Water Supply and Subdivision Programs.

Attached is a copy of the department's proposed bill for the Public Water Supply/Subdivision Section. It's a bill that proposes to amend both the Montana Public Water Supply Act and the Sanitation in Subdivisions Act. Its purposes are more fully explained in the package but briefly are to:

UNDER THE PUBLIC WATER SUPPLY ACT:

1. provide for administrative enforcement orders,

2. provide both administrative and civil penalties,

3. authorize the department to collect fees,
(We are proposing a fee of up to $3.00/service connection and fees to cover part of the costs of providing engineering plan and specification review.)

4. authorize the department to review proposed new public systems for "viability" as well as for general minimum design standards. The purpose of this is to attempt to avoid the creation of more public systems which have no hope of complying with state and federal requirements.

UNDER THE SANITATION IN SUBDIVISIONS ACT:

1. remove the current fee cap of $48.00/lot to enable the department to raise the fees enough to support one additional FTE for the Subdivision Review Program. (This may need to be taken out in view of the committee's action regarding this position.)

We would appreciate it very much if you would consider carrying this legislation for us. I would be happy to meet with you at your convenience to provide further information if you so desire. I can be reached at 444-2406 (work) or 443-2322 (home). Thanks for your support and consideration.

RESOLUTION
1990-17

WHEREAS, THE QUALITY OF DRINKING WATER IN MONTANA IS A CRITICAL RESPONSIBILITY OF STATE AND LOCAL GOVERNMENT, AND;

WHEREAS, THE STATE WATER QUALITY BUREAU HAS WORKED EFFECTIVELY WITH CITIES AND TOWNS TO MONITOR AND INSPECT SYSTEMS AND PROVIDE TRAINING AND TECHNICAL ASSISTANCE FOR OPERATORS, AND;

WHEREAS, IF ADEQUATE FINANCING IS NOT AVAILABLE, THE REGULATORY FUNCTIONS OF THE BUREAU WILL BE ASSUMED BY THE FEDERAL GOVERNMENT AND THE TECHNICAL ASSISTANCE PROGRAMS WILL BE DISCONTINUED, AND;

WHEREAS, MUNICIPAL UTILITIES AND CONSUMERS CAN BE SERVED MORE EFFECTIVELY IF THE STATE RETAINS CONTROL OF THE WATER QUALITY PROGRAM.

NOW, THEREFORE, BE IT RESOLVED THAT THE MONTANA LEAGUE OF CITIES AND TOWNS WILL SUPPORT LEGISLATION TO ALLOW THE STATE TO ADMINISTER THE SAFE DRINKING WATER ACT AND TO CONTINUE TRAINING, TECHNICAL ASSISTANCE, PUBLIC EDUCATION, CONTAMINATION MONITORING AND INVESTIGATION SERVICES.

BE IT FURTHER RESOLVED THAT THE LEAGUE WILL WORK TO ASSURE THAT THE FEE SYSTEM THAT IS IMPOSED TO FUND THESE SERVICES WILL NOT DISCRIMINATE AGAINST MUNICIPAL CONSUMERS OR OBSTRUCT THE ORDERLY DEVELOPMENT OF CITIES AND TOWNS.

February 15, 1990

Governor Stan Stephens
Capitol Office Bldg.
Helena, MT 59620

Dear Stan:

I enclose a letter signed by a number of the groups in Montana who are involved in delivering safe drinking water to the rural communities and small towns of Montana.

We all are most supportive of Montana retaining primacy in Administering the Safe Drinking Water Act in Montana. We are also aware of many of your problems when it comes to funding these programs.

This is a sincere offer on our part to do anything we can to assist you in working out this particular problem.

I would like to meet with you and as many of these organizations as you desire at your convenience to discuss this.

Sincerely,

Arnold Peterson

Arnold Peterson

AP:ajt

Enclosures

Our organizations provide a vehicle for input from the regulated public regarding the extensive ramifications of the SDWA in the State of Montana. Perhaps, an interim committee comprised of key DHES officials, executive and legislative representatives, the Consumer Council, and our organizations could study the issues and present proposals for legislative action.

Thank you for the opportunity to present our viewpoint.

Sincerely,

Ralph Dunahoo, MSAWWA National Director, Conrad, MT

Dan Kell, MRWA National Director, Conrad, MT

Gerald Lukasik, MSAWWA Chairman Missoula, Montana

Ray Wadsworth, MRWA Executive Director, Great Falls, Montana

Lyle Meeks, MSAWWA Gov't Affairs Committee
P.O. Box 6039, Great Falls, MT 59406

Arnold Peterson, MRWA Legislative Chairman
1220 5th St., Havre, MT 59501

cc Mr. Allen Kolstad, Lt. Governor
Mr. Don Pizzini, MDHES
Mr. Bill Opitz, MDHES
Mr. Steve Pilcher, MWQB
Mt. Environmental Quality Council

MONTANA SECTION AMERICAN WATER WORKS ASSOCIATION

JANUARY 15, 1990

RESOLUTION SUPPORTING THE STATE OF MONTANA RETAINING PRIMARY ENFORCEMENT AUTHORITY

WHEREAS, the State of Montana adopted state-wide rules and regulations in 1907 for the assurance of safe drinking water; and

WHEREAS, the U.S. Congress in 1974 passed the first National Safe Drinking Water Act (SDWA) public law 93-523 with enforcement authority given to the U.S. Environmental Protection Agency (EPA); and

WHEREAS, Montana was awarded primacy in 1977, and the State, through the Montana Department of Health and Environmental Sciences, has maintained primacy since that time; and

WHEREAS, the U.S. Congress in 1986 adopted amendments to the Safe Drinking Water Act and mandated standards for 83 specified contaminants; and

WHEREAS, Montana's concern for its citizens and its desire to address its own problems and concerns has been a tradition for over 100 years; and

WHEREAS, Montana finds itself at a point of critical decision making; and

WHEREAS, the concept of primacy is having federal standards with the application of state judgement; and

WHEREAS, it is in the best interest of the citizens of the State of Montana that the State retain primary enforcement authority through the Montana Department of Health and Environmental Sciences over the Safe Drinking Water Act.

THEREFORE, be it resolved this day, January 15, 1990 that the Montana Section American Water Works Association urges the State of Montana to retain primary enforcement authority, through the Montana Department of Health, and the Montana Section urges the legislature to take the necessary action to ensure that proper resources will be authorized to ensure the State can retain primacy.

ADOPTED JANUARY 15, 1990 BY VOTE OF THE MONTANA SECTION BOARD MEMBERS.

Gerald Lukasik, Chairman
Montana Section
American Water Works Association

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

City Cty Health Dept - GT. Falls
Organization

Cherry Loney, Health officer
Name of Representative (print)

Cherry Loney
Signature

12-20-90
Date

RECEIVED
JAN 2 - 1991
MONTANA DEPT. OF HEALTH & ENV. SCIENCES
WATER QUALITY BUREAU

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

Midwest Assistance Program
Organization

Bill Leonard - MAP Field Representative
Name of Representative (print)

Signature

12/21/90
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

Montana Section
American Water Works Association
Organization

Richard A. Nisbet - National Director
Name of Representative (print)

Richard A Nisbet
Signature

January 2, 1990
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

U.S. Environmental Protection Agency
Region VIII
Organization

James J. Scherer
Regional Administrator
Name of Representative (print)

Signature

11/26/90
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

Montana Rural Water Systems, Inc. endorses this program with those minor changes made by the Montana Rural Water Systems, Inc. Legislative Committee.

Montana Rural Water System, Inc.
Organization
925 - 7th Avenue South
Great Falls, MT 59405

Dave Jones
Name of Representative (print)

Dave Jones
Signature

December 20, 1990
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to [illegible] ensure their full implementation.

U.S. Environmental Protection Agency, Reg. VIII
Organization

Max H. Dodson
Director, Water Management Division
Name of Representative (print)

Max H. Dodson
Signature

11/13/90
Date

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

U.S. EPA REGION VIII MONT
Organization

JOHN F WARDELL
Name of Representative (print)

John F. Wardell
Signature

11/19/90
Date

Commissioners
Russell J. Ritter, Mayor
Layleen Beaton
Tom Huddleston
Rose Leavitt
Blake J. Wordal

William J. Verwolf
City Manager

GUARDIAN OF THE GULCH

City of Helena

City-County
Administration Building
316 North Park
Helena, MT 59623

Phone: 406/442-9920

November 20, 1990

Dan L. Fraser, P.E., Supervisor
Public Water Supply Section
Dept. of Health & Env. Sciences
Water Quality Bureau, Cogswell Bldg.
Helena, MT 59620

Dear Dan:

At the November 19, 1990, meeting the City Commission approved a resolution to approve the recommendation of the Public Water Supply Task Force. Attached is the Statement of Endorsement from the Executive Summary Report which has been signed by Russ Ritter, Mayor, City of Helena.

Sincerely,

Richard A. Nisbet, P.E.
Director of Public Works

RAN/SKW/sw

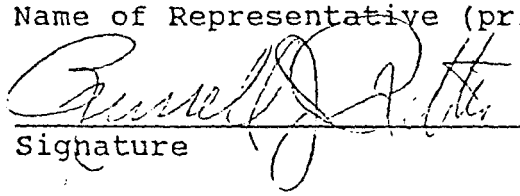
endrsmnt.wtf

STATEMENT OF ENDORSEMENT

I have read the Executive Summary Report of Montana's Public Water Supply Task Force, concur with those recommendations and encourage the Montana Legislature to take the steps necessary to ensure their full implementation.

City of Helena
Organization

Russell J. Ritter, Mayor
Name of Representative (print)


Signature

November 19, 1990
Date

Your Task Force concluded that Montana water users and suppliers are confronted with the same contamination, operational, and economic problems other PWSs are facing throughout the United States. This emphasizes the need to implement a strong PWS program in your State, one with adequate resources to meet these challenges and ensure a continuous supply of safe drinking water. We at EPA Region VIII are prepared to provide you all possible support to continue to implement an effective PWS program.

Please call John Wardell, Director, EPA Montana Office, at 449-5432 or me at (303) 293-1603 with your questions or concerns.

Sincerely,

James J. Scherer
Regional Administrator

cc: Dennis Iverson, MDHES
John Wardell, 8MO
Max Dodson, 8WM

Report to
DHES
Governor Stephens
the 1991 Legislature

prepared by the

MONTANA
Public Water Supply
Task Force

notification program to inform water users of contamination and compliance problems.

Almost all of Montana's 2,400 public water systems will be affected by these amendments. However, small water facilities (comprising over 96% of Montana's systems) will have the most difficulty in meeting the new requirements. Their limited resources and narrow tax base can not readily handle the technical and financial impacts of the regulations.

In order to completely meet the new regulations, Montana's Public Water Supply Section is estimated to need 59.25 FTE's (1.8 for Operator Certification; 5.55 for Subdivisions; and the remaining 51.9 for the Public Water Supply Program). These needs are comparable to those of other states' drinking water agencies preparing to meet the 1986 SDWA amendments.

Loss of State Primacy

If Montana loses primacy, the EPA will become the primary enforcement authority over public water supplies in the state. EPA enforcement action will occur only after health standards are exceeded or systems are in violation of the SDWA. The EPA's approach to Montana's public water supplies will be strictly regulatory, not preventative.

Loss of state primacy will also result in a loss of federal funding assistance which is essential to Montana's drinking water programs. These programs include operator training, public education, technical assistance, responses to contamination, and investigations of waterborne diseases. The Subdivision and Operator Certification programs would also suffer because of their reliance on the Public Water Supply Program for staff and funds.

Continuing to fund existing state drinking water programs without primacy would cost Montana an additional $1.18 million over existing state support. Elimination of the Public Water Supply Program with retention of only the Subdivision and Operator Certification programs would still require an additional $339,184 over the present budgets of these programs. Clearly, Montana will face a greater financial burden if federal funding assistance to its drinking water programs is lost.

Task Force Conclusions and Recommendations

After carefully reviewing the problems facing Montana's Public Water Supply Program, the Task Force developed the following conclusions and recommendations.

Conclusions

- Montana's Public Water Supply Program should retain existing regulatory and technical assistance functions.
- Montana's Public Water Supply Program must be expanded to include requirements of the amended Safe Drinking Water Act and state primacy must be retained.
- Legislative changes must be made to authorize the DHES to assess fees to supplement funding of the Public Water Supply Program.

Recommendations

- Montana must provide a comprehensive Public Water Supply Program including preventive and enforcement activities.
- The Public Water Supply Section should be staffed and funded to support the interim program shown in Figures 1 and 2.
- The Sanitation in Subdivisions Act, MCA 76-4-105, should be amended to increase fees to support an additional 1.0 FTE.
- The Public Water Supply Act should be amended to authorize the Department of Health and Environmental Sciences to assess fees for services to alleviate the Public Water Supply Program funding shortfall. Funds raised through fees should be used to supplement existing funding of the Public Water Supply Program.*
- The Task Force should reconvene to reassess the status of the Public Water Supply Section and make recommendations for the 1993 Legislative Session.

**Fees should be generated as engineering plan review fees and service connection fees. Total cost for the program would not exceed the equivalent of a $3 annual fee on each public water supply service connection. Very small water systems (those with less than 33 connections) may be assessed a minimum annual fee of $100 to reflect their program support more equitably.*

It is important to note that any new fee assessments or increases in existing fee schedules would be determined through the rule-making process. This guarantees the public opportunity to review and com-

MONTANA PUBLIC WATER SUPPLY PROGRAM

TASK FORCE MEMBERS

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Water and Waste Water Operators
Advisory Council
c/o Dept. of CEEM
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PHONE - 442-3050

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RFD 203 So. Dixon
Opportunity, MT 59711
PHONE - 563-8421

Mr. Alec Hanson, Exec. Director
Montana League of Cities and
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P.O. Box 1704
Helena, MT 59624
PHONE - 442-8768

Ms. Denise Peterson
Public Service Commission
Dept. of Public Service Regulation
2701 Prospect Ave., Bldg. D
Helena, MT 59601
PHONE - 444-6199

Mr. Ron Woods
Public Service Commission
Dept. of Public Service Regulation
2701 Prospect Ave., Bldg. D
Helena, MT 59601
PHONE - 444-6199

Mr. Bill Leonard
Midwest Assistance Program
P.O. Box 1456
Whitefish, MT 59937
PHONE - 862-3600

Ms. Gail Kuntz
Environmental Quality Council
Capitol Station
Helena, MT 59620
PHONE - 444-5366

Ms. Ellen Leahy, Director
City-County Health Dept.
301 W. Alder St.
Missoula, MT 59802
PHONE - 721-5700

Mr. Jim Carlson
City-County Health Dept.
301 W. Alder St.
Missoula, MT 59802
PHONE - 721-5700

Mr. Pete Frazier
City-County Health Dept.
1130 17th Ave. South
Great Falls, MT 59405
PHONE - 761-1190

Mr. Dick Nisbet
Mont. Section AWWA Director &
City of Helena Public Works Dir.
316 N. Park
Helena, MT 59623
PHONE - 442-9920 EXT. 426

Mr. Robert Peccia, P.E.
Robert Peccia and Assoc.
810 Hialeah - Box 5653
Helena, MT 59604
PHONE - 442-8160

Mr. Ray Wadsworth
Montana Rural Water Systems, Inc.
925 7th Ave. South
Great Falls, MT 59405
PHONE - 454-1151

Ms. Melissa Tuemmler, President
Montana Envir. Health Assoc.
c/o City-County Health Dept.
1130 17th Ave. South
Great Falls, MT 59405
PHONE - 761-1190

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 19
DATE 2-19-91
BILL NO. SB-407

TESTIMONY ON SB 407

Mr. Chairman and Committee Members. My name is Erling Tufte, Director of Public Works for the City of Great Falls.

We agree with the general intent of SB 407 to adequately fund the Department of Health and Environmental Science's (DHES) Montana Public Water Supply Program.

Our views are as follows:

1. We recognize that regulations and public interest demand increasing attention to public water supply management.

2. We support State vs. EPA primacy in enforcing federal regulations.

3. We believe that the current State program is underfunded.

4. We believe that a combination of general tax revenues and consumer fees is the appropriate means of funding the State Public Water Supply Program.

5. We suggest that the program be closely monitored so that it's cost does not escalate beyond the public's ability to pay. A specific limitation on cost is recommended.

Our support of the specific fee structure and level of fees proposed in SB 407 is qualified. As we require at the local government level, we recommend that the proposal be thoroughly presented and justified. The public should be clearly informed on the total cost, revenue structure, proposed level of service and possible alternatives.

Finally, we wish to express our concern for, and commitment to responsible Public Water Supply management. We recognize that much of what we do is likely to be in response to Federal or State regulations. We hope that the Federal and State Governments will be partners in education, solutions and funding; not simply vehicles to author and pass along regulations. New government demands without accompanying funding have become an increasing burden to local government.

For recording secretary — SB407

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 20
DATE 2-19-91
BILL NO. SB-407

SENATE LOCAL GOVERNMENT COMMITTEE

Montana Rural Water Systems; a private non-profit Training and Technical Assistance organization, is not a proponent of regulations but we are genuinely concerned about the health of our citizenry and the purity of water they are served for drinking. With a membership representing the majority of community type drinking water systems in Montana, we have become their representative at both the State and National level. As such, we are obligated to enumerate their wishes.

Montana has historically been a leader in new developments of the drinking water industry. Because of emphasis by the State on seemingly more important issues over the past several years, the industry has been caught up short and now we find ourselves in a position wherein we could lose primacy in the State of Montana in our drinking water program. In simplified terms, this means that unless the water systems in Montana are regulated by the State of Montana to meet the requirements of the Safe Drinking Water Act and its 1986 Amendments, the State of Montana will no longer regulate its own activities but rather will be regulated by EPA at the National level. Notice has been given by USEPA that the State of Montana must get into compliance or lose its primacy.

Faced with a shortage of staff and a multitude of non-primacy duties, our State Regulatory Agency has not been able to comply with the monitoring required by EPA. Random sampling of some of our water systems has turned up such water contaminants as benzene, radon, lead, trichloroethylene and others which tells us these problems are not just "big city" problems but are also found out here in what we commonly consider as "pristine Montana".

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 21
DATE 2-19-91
BILL NO. SB-407

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Pete Fraser

Address: 3305 17 Ave S. Gt Falls

Telephone Number: 761-3808 (h) 761-1190 (w)

Representing whom?

City-Co Health Dept Gt Falls

Appearing on which proposal?

SB 407

Do you: Support? ✓ Amend?_____ Oppose?_____

Comments:

State WQB must have adequate funding & staff to maintain Primacy for the Safe Drinking Water Act Enforcement. Should EPA take back This Program, as They are threatening to do, WQB will not be able to Provide adequate inspections & Technical assistance to Public Water Supplies. We urge a Do Pass on SB 407

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of Feb, 1991.

Name: Richard A Nisbet

Address: 316 N. Park Ave
Helena, MT

Telephone Number: 447-8426

Representing whom?
City of Helena & Montana Section of American Water Works Assn

Appearing on which proposal?
SB 407

Do you: Support? ✓ Amend?____ Oppose?____

Comments:
Support intent of SB 407
will reserve comments on flex until
hearing's are held by DFWES.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 22
DATE 2-19-91
BILL NO. SB-407

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Chris Kaufmann

Address: 107 Lawrence

Helena

Telephone Number: 443-2520

Representing whom?

MEIC

Appearing on which proposal?

SB 407 + SB99

Do you: Support? V Amend?____ Oppose?____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

14065234755

MISSOULA COUNTY
MISSOULA
CITY-COUNTY HEALTH DEPARTMENT
301 W. ALDER
MISSOULA, MONTANA 59802

HERE'S THE FAX:

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 23
DATE 2-19-91
BILL NO. SB-407

TO: Jim Melstad

FROM: Jim Carlson

DATE: 2/19/91

NO. OF PAGES INCLUDING COVER: 3

OUR FAX NUMBER: (406) 523-4781

OUR TELEPHONE NO.: (406) 523-4755

Please find some one to read & submitt.

FEB 19 '91 15:16 FLATHEAD COUNTY

Flathead County

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 24
DATE 2-19-91
BILL NO. SB-407

FACSMILIE MESSAGE TRANSMITTAL FORM

800 SOUTH MAIN STREET • KALISPELL, MONTANA 59901 • (406) 752-5300
FAX (406) 756-5699

DATE: Feb 19 1991

FAX TO #: 444-1374

NAME: Tim Melstad

LOCATION: MT DHES

PHONE:

TOTAL # OF PAGES (INCLUDING COVER SHEET) 3

FAX FROM: Joe Russell

DEPARTMENT: Health

PHONE: 756-5632

****

MESSAGE

Flathead City-County Health Department

723 5th Ave. East • Kalispell, Montana 59901
Environmental Health Services 756-5632 • Community Health Services 756-5633

DATE: February 19, 1991

TO: Senate Local Government Committee
Eleanor L. Vaughn, Chairperson

FROM: Flathead City-County Board of Health

TESTIMONY: SB 407

In accordance with the position statement of the Flathead City-County Board of Health adopted January 17, 1991, the Board fully supports the proposed legislation introduced as Senate Bill number 407. This Bill establishes, in short, administrative enforcement of the laws protecting public water supplies and providing for assessment of fees established through rulemaking to recover cost of department services under the laws relating to Public Water Supplies and to Sanitation in Subdivisions.

This Bill would primarily affect local health departments in two ways. Our Environmental Health Services division contracts with the Department of Health and Environmental Sciences to: perform sanitary surveys of Public Water Supplies and perform concurrent review of subdivision proposals as a local governing body.

The Sanitary Survey Program is an important local program. Through the survey mechanism, with state support, we are able to identify potential problems that may arise with any given system and make changes before major problems occur. This program can be very "proactive" with additional support.

Our subdivision review program is an essential local program. Local review is necessary to compare a subdivision proposal to the actual site conditions. The existing reimbursement schedule falls well short of the services we provide. A recent internal assessment indicates that we are reimbursed roughly $13.00 per hour we spend in this program. This figure does not reflect driving time, vehicle maintenance, or administrative time, which if considered, substantially reduces the above dollar amount. Seventy five percent (75%) of the respondents to a recent survey conducted by this office indicated that they are unwilling to subsidize the development of property with tax dollars. Therefore, an increase in review fees is necessary.

Respectfully Submitted,

Jane Lopp

Jane Lopp, Chairperson
Flathead City-County Board of Health

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 25
DATE 2-19-91
BILL NO. SB-407

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of February, 1991.

Name: Gary L. Storm

Address: 146 Briarwood
Helena MT 59601

Telephone Number: (406) 442-3050

Representing whom?
Montana Society of Engineer - American Society of

Appearing on which proposal? C.V.I Engineers/Montana Section
SB 407

Do you: Support? X Amend?_____ Oppose?_____

Comments:

I served on Montana Public Water Supply Program Task Force 1990 as a representative of the Montana engineering profession I do not believe that the interests of the Montana citizens will be served by allowing the State to lose primacy as defined by 1986 Safe Drinking Water Act Amendments. Senate Bill 407 will provide the legislative and financial tools required to allow the State to keep primacy and continue to insure that Montana public water systems deliver safe and reliable drinking water.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-19-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

DATE FEBRUARY 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Sue Bergeson	MT Solid Waste Coal	99	✓	
Ray Wadsworth	MT Rural Water Systems	407	✓	
CARLO CERI	PACK CO	99		✓
ERLING TUFTE	~~KOS~~ CITY OF GF	99 ~~407 413~~		✓
Ed Butcher	SCIS	302 ~~407~~		✓
ERLING TUFTE	CITY OF GF	407	✓	✓
" "	"	413	✓	✓
J.W. REINHARDT		302		✓
David Smith	MACO & Gallatin Co	302 & 99		✓
M.D. LAWRENCE	RANCHER	SB 99	✓	
Linda Lawrence	Rancher	SB 99	✓	
Dan Kandilas	City of B.T.	407	✓	
Dan Kandilas	" " "	413	✓	✓
Carl Dunker	West Yellowstone	302	✓	
FRANK CROWLEY	MT. SOLID WASTE CONTRACTORS' ASSOC	99	✓	
Tommy Butler	Mont. Dept of State Lands			
Nena Hassanein	NPRC	SB 99		✓
Chris Kaufman	MEIC	SB 99	✓	
Richard Nisbet	City of Helena	SB 413		✓
" "	" "	SB 99		✓
" "	" "	SB 407	✓	
Kay Foster	Yellowstone County	SB 367	✓	
Bob Foglesong	Gallatin County	SB 99	✓	
Linda Reed	Gallatin County	SB 99	✓	
J. Patton Bennett	GALLATIN COUNTY	SB 99	✓	
Gary L. Stern	Prickly Pear Spectrum	SB 302	✓	

DATE FEBRUARY 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
WARD JACKSON	SELF	302		✓
Marvin Barber	A. P. A.	302		✓
Walt Steingruber	A.P.A	302		✓
Louise Steingruber	A P A	302		✓
Lorena L. Evans	Self	302		✓
Kim Einkerud	MT Assn. State Dist. Grazing	302		✓
Allyn Christiaens	Montana People's Action	413	✓	
Donald R Jones	SELF	302		✓
STEVEN W. DANIELS	WEST YELLOWSTONE	305	✓	
Laura Anderson	Helena	99	✓	
TERRY KELLY	KALISPELL	99	✓	
Alan Evans	MSGA - Self	302		✓
Walt Johnson				
Terry Cochran Caldwell	MSUCA	99	✓	✓
CARLO CIORI	PARK CO	302		✓
Henry A. Haye	West Yellowstone Inn	99	✓	
SCOTT J. ORR	SJ ORR SERVICES - MSUC	99	✓	
Ron Stevens	Public Land Access Assoc, Inc	302	✓	
Tom Harding	Teton Co.	302	✓	
Dennis E Hanson	BOZEMAN - NWF	302	✓	
C Albert Carlson	Teton Co. Comm.	302	✓	
Donald Stuart	Teton Co Comm	302	✓	
Pete Frazier	City-Co. Health GT Falls	99		✓
" "	"	407	✓	
Lynn Lencioni	Council, West Yellowstone	305	✓	
Bill Howell	West Yellowstone	305	✓	

DATE FEBRUARY 19, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Lorna Frank	Farm Bureau	SB302		X
CAROL MOSHER	MT. CATTLEWOMEN	SB302		X
KAY NORENBERG	WIFE			X
[illegible]	Self & Mont. Stockgrowers	SB 302		X
[illegible]	MSGA	"		X
Jim Johnston	Butte/Silver Bow	S.B. 99		X
Mike Shea	" "	S.B 99		X
[illegible]	[illegible]	SB302	—	X
[illegible]	[illegible]	SB305	✓	
Gordon Morris	MTA Co	SB302	Amend	
Bob Gilbert	MT Woolgrowers Assn	SB302		X
Gary L. Stacy	Montana Society of Engineers	SB407	✓	
Bob Sibylen	Mt Grain Growers	302		X
Gordon Morris	MTA	305	✓	
Betty Lund	MACR	334	✓	
Bonnie Lamey	MACR	334	✓	
Tony Schoonen	Skyline Sports Anaconda Sports	334	✓	
Ray Wadsworth	MT Rural Water Systems	413		X
Rick Duncan	DHES - Water Quality Bureau	SB407	.	
Jim Melstad	DHES-Water Quality Bureau	SB407	X	
Gordon Morris	MTA Co	SB99		X
[illegible]	BFI of Montana	SB99	X	
Steve Huntington	EQC	SB99		

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Esther Bengtson, on February 21, 1991, at 3:30 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: none

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

EXECUTIVE ACTION ON SB-437

Discussion: Senator Bengtson introduced Steve Huberly, Planning Director, Flathead County, and allowed him to offer his testimony of support of this bill. This bill was read, scheduled, and heard on the same day, so Senator Brown was unable to get his proponents to Helena. Senator Bengtson had told the committee on February 19, 1991, that this testimony would be allowed.

Steve Huberly, Planning Director, Flathead County, presented his supporting testimony and amendments sponsored by Senator Brown (Exhibit #1, #2)

EXECUTIVE ACTION ON SB-40

Motion: Senator Eck moved to Table SB-40 which Senator Devlin asked not to hold hearings on. The vote was unanimous and recorded as a roll call vote.

EXECUTIVE ACTION ON HB-64

Motion: Senator Thayer moved to Table HB-64, Representative Peck has signed the committee bill SB-440 which takes care of all county appointed boards. The motion passed unanimously.

EXECUTIVE ACTION ON HB-55

Amendments, Discussion, and Votes: C. Erickson presented the amendment and the letter from Gordon Morris of MACo stating that the $50,000 was not the intention (Exhibit #5, #5A). This amendment would change the language to the original language of the bill in reference to $25,000.

Senator Harding moved the amendment. The vote was unanimous.

Motion: Senator Thayer moved to Concur as Amended on HB-55. The vote was unanimous, and recorded as a roll call vote. Senator Harding will carry the bill.

EXECUTIVE ACTION ON SB-407

Amendments, Discussion, and Votes: Senator Waterman requested C. Erickson to draft amendment to SB-407 after the hearing (Exhibit #7). These remove the reference to a special revenue account which the DHES did not intent to put in this bill. Senator Beck had concerns about the lack of a cap or limits, even though this program is based on a fee that is budgeted against. After discussing this with Senator Waterman the amendments were purposed to add the sentence in amendment #2. Then the rest of

the amendments were technical changes.

Senator Eck asked if Senator Beck was in agreement with the amendments since he had left the room? C. Erickson said that Senator Beck did approve of the amendments.

Senator Eck moved to amend SB-407.

Senator Bengtson offered a letter from Joe Steiner, Plant Superintendent, Public Water Supply Task Force Member, stating that they would like time to work with the DHES to amend this bill so that fee schedule would be more palatable to larger communities like Billings (Exhibit #8). She also added that Bruce McCandles had spoken with Senator Waterman after the hearing. He thought this was a good bill, but the fee schedule was punitive to large areas. Senator Bengtson read the proposed ideas for change from Joe Steiner's letter.

Senator Hammond agreed that these concerns need to be addressed. Senator Thayer said he was serving on an interim study commission with Senator Pinsoneault dealing with local government policy. He stated that there are a lot of small communities that could not afford to comply with these regulations.

Senator Eck asked the committee to look at the penalties. Unless the state does something on this to retain primacy we will leave it to the EPA. When the first drinking water acts were initiated local governments and coordinators talked a lot about this, but at that time the government was offering money to the state to handle it.

Senator Thayer said it is actually so costly with these regulations, that it would be cheaper to move whole communities to other locations that rebuild their systems. Senator Eck added that this was done in Anaconda.

Recommendation and Vote: The committee decided to declare SB-407 a revenue bill and list it on the letter to the President of the House, Hal Harper. This will give more time for consideration on this very important bill.

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 7
DATE 2-21-91
BILL NO. SB-407

Amendments to Senate Bill No. 407
First Reading Copy

Requested by Senator Waterman
For the Committee on Local Government

Prepared by Connie Erickson
February 20, 1991

1. Title, lines 21 through 23.
Strike: "ESTABLISHING" on line 21 through ";" on line 23

2. Statement of intent, page 2, line 14.
Following: "."
Insert: "It is the intent of the legislature that the rules establish a reasonable fee schedule that approximates the department's actual and necessary costs."

3. Page 14, lines 7 and 8.
Strike: "sanitation" on line 7 through "[section 10]" on line 8
Insert: "state general fund"

4. Page 14, lines 21 and 22.
Strike: "sanitation" on line 21 through "[section 10]" on line 22
Insert: "state general fund"

5. Page 15, lines 17 and 18.
Strike: "and" on line 17 through "[section 10]" on line 18

6. Page 15, line 19 through page 16, line 3.
Strike: section 10 in its entirety
Renumber: subsequent sections

7. Page 16, line 4.
Strike: "(1)"

8. Page 16, line 9.
Strike: subsection (2) in its entirety

CITY OF BILLINGS

PUBLIC UTILITIES DEPARTMENT
P.O. BOX 30958
BILLINGS, MT 59111
PHONE (406) 657-8300

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 8
DATE 2-21-91
BILL NO. SB-407

February 21, 1991

To: Bruce McCandless, Assistant City Manager

From: Joe Steiner, Plants Superintendent
Public Water Supply Task Force Member

SUBJECT: SB 407

After many and lengthy communications with Jim Molstad, DHES, we have sorted out some of the confusion about this bill. However, there are still many unanswered questions. The Executive Summary - Report to DHES, Governor Stephens, and the 1991 Legislature prepared by the Montana Public Water Supply Task Force (Report) outlines a proposed staffing plan for Montana's water supply program. This plan does not match a proposed staffing plan approved by the appropriation subcommittee. No fiscal note for this bill was available to know for sure what staffing plan or fee schedule was used to justify the bill. Assessment of the staffing plan in the bill is therefore, impossible.

The interim program funding needs and sources (Figure 2 of the Report) shows a funding split of federal money - 50% to state money - 50%. Sixty (60) percent of the state money is generated by the proposed service connection fee. This fee will be charged against all public water supply systems including Billings, Lockwood, Yellowstone County Water District, Cedar Park, etc. The national average for state water supply programs has the states funding 68% of their programs. Now Montana funds 36% of the water supply program. This shows that Montana is too dependent upon federal money to fund the water supply program. The general public should support more of the program. A disportionate amount of the program funding is placed on the public water suppliers. The state needs to become a <u>full</u> partner in this program.

The shortfall in funding shown in Figure 2 of the Report is overstated. SB 407 requires the DHES to recoup all costs associated with engineering and plan reviews, as well as plat and subdivision reviews. The staffing required for these programs is more than 9 FTE's. Using DHES estimates of $50,000/FTE, the revenue generated from these activities should be $450,000 plus. The shortfall is <u>not</u> reduced by this revenue. This revenue should substantially reduce the need for any proposed service connection fee against public water suppliers.

The proposed service fee is not equitable. Small systems, who benefit the most from the state programs, will not pay

the smaller systems. The American Water Works Association suggests that state general fund revenue finance broad based drinking water functions. Fees are only to be used to pay for functions directly tied to specific water suppliers. EPA has stated: "a well structured fee ... is the most equitable means of matching program costs with those responsible for or benefiting from program activities." They also state that such "fees provide a direct relationship between the demand for a service and the costs of providing it."

We see three options acceptable to Billings:

Option 1: Have the bill designated as a revenue bill. This allows additional time for us to negotiate our differences with the DHES. The DHES agrees with this option. We could come back to the committee with a proposal that may be more acceptable.

Option 2: Amend the bill to include. 1. A maximum fee of $7500 and a minimum fee of $150 assessed per public water supply (community and non-community). This fee schedule more equitably charges fees in comparison to the services provided. The service connection fee for medium sized public water suppliers will be less than the $3 proposed; 2. Mandate the engineering and plan review and the plat and subdivision review programs be self supporting. The bill as written accomplishes this. However, the DHES indicated this was not their intent. This revenue must be put in the public drinking water special revenue fund.

Option 3: Amend new section 4 requiring that all fees assessed each public water supply shall be reasonably commensurate with the cost of providing the DHES service.

Note: Public water suppliers must be allowed to pass on a mandated fees to their consumers without meeting the statutory requirements for rate increase public hearings with either option 2 or 3.

The bill's intent, providing a comprehensive public water supply program, is supported. However, there is too much uncertainty to support the bill as written. We recognize that fee equity is debated during the administrative rule making process, but some degree of equity needs to be established in the statute.

See proposed amendments attached herewith to implement Options 2 and 3.

February 21, 1991

PROPOSED AMENDMENT TO SB 407

OPTION 2:

Amend New Section 4(1) to read as follows:

NEW SECTION. Section 4. Board to prescribe fees. (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system must be based on the number of connections to the public water supply system, although the minimum fee for any system is ~~$100~~ $150 and the maximum fee is $7,500. The annual fee shall not recover any costs associated with departmental plan and specification reviews, plat and subdivision reviews, and/or operator training/certification programs. Public water supply systems may, without the need for the public hearing required under Section 69-7-111, automatically raise their rates to recover their costs of paying all fees prescribed under this chapter.

February 21, 1991

PROPOSED AMENDMENT TO SB 407

OPTION 3:

Amend New Section 4(1) to read as follows:

NEW SECTION Section 4. Board to prescribe fees. (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system ~~must be based~~ on the number of connections ~~to the public water supply system, although the minimum fee for any system is $100.~~ shall bear a direct and proportional relationship between the demand for a service by a public water supply system and the department's cost of providing it. Public water supply systems may, without the need for the public hearing required under Section 69-7-111, automatically raise their rates to recover their costs of paying all fees prescribed under this chapter.

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 2-21-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Vice-Chairman Eleanor Vaughn, on March 7, 1991, at 3:20 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: none

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HB-182

Presentation and Opening Statement by Sponsor: Representative Don Larson, District 65, said his bill expands rural fire districts to allow trustees to provide firefighting personnel and emergency response equipment. This bill permits the expansion of the purchasing authority of the fire districts to buy ambulances, search and rescue equipment, hazardous duty equipment, and other things not normally associated with strict firefighting. The roll of volunteer firefighting groups has greatly expanded, so their equipment needs have also expanded. They have not been specifically authorized to buy those other types of equipment.

Proponents' Testimony: James Lofftus, Montana Fire Districts Association, and also representing the Missoula Rural Fire District and Lockwood Fire District, said that county attorneys have said that if the law doesn't say it, then the fire districts can't do it. Many districts have heavy rescue trucks that are

DISCUSSION ON SB-407

Discussion: Senator Waterman entered amendments to SB-407 that are a result of the DHES meeting with the Billings group. (Exhibit #2). She also explained her handout from the March 5, 1991 meeting (Exhibit #3). Senator Waterman said the bill was amended on February 21, 1991, and this second set of amendments are clarifications, notably Steve Brown, one of the mining interest representative. DHES will further explain them. Briefly #1. amends the title, #2 & #7 strikes the effective date: the DHES felt they would not be able to implement this by July 1, #3 amends fees and sets up an appeals process to oppose the fee established, #4 outlines the appeals process, #5 concerns the $1000/day fine, so it has been changed to $500/day in line with criminal penalties, #6. deals with contested fees. She said questions and concerns need to be discussed. What this bill is talking about is the Public Drinking Water Act (PDWA) and whether we will continue primacy in this state, and at what level and services we will provide. This bill came from a task force that was established by Governor Stephens. The Federal Government had indicated that the state of Montana would lose primacy because we were not adequately enforcing the EPA rules. We were told if we did not adequately enforce these rules by adding additional staff that we would lose primacy. The Governor established the task force. They reviewed the different options, and in the material in Exhibit #3 the options are outlined. Six options were studied. Everything from full state program with full primacy to the repeal of all state programs and letting EPA take over. There were several programs in between. This bill is a basic policy decision, and this is what Legislatures are all about. Deciding what kind of public water policy we want in the state of Montana. Whether we want to retain primacy, is this important? Is it important to have a state system? Or do we want the Federal Government to regulate this area? The EPA program is really a regulatory and compliance program as opposed to the state program that will monitor, train, and offer assistance to local communities to safeguard their public drinking water systems. The task force concluded that Montanans want to retain control of their own drinking water systems, and they like the assistance they receive from the state program, and they want it continued. The state system has allowed variances. They have allowed water systems to come into compliance slowly, and the feeling from Montanans was that this was good. This does not bring us into full compliance with the EPA. It was the feeling of the task force and the DHES that this is an interim measure. They believe it will bring us close enough to compliance that the Federal Government will not threaten us with lose of primacy. The bottom line is that it protects drinking water in the state, and assists in planning for programs that will last for the next 100 years. They don't want to see local communities come up with water systems that may not be adequate, and then they would have to go back in 10 years to rebuilt and replace these systems. Some subdivision areas have seen this happen because there was not adequate planning. No one told them that their systems they

were buying were not viable. For these reasons the task force concluded that they favored option #1 to retain primacy with a full state program. That is what is entailed in this bill.

Senator Harding asked if Bruce McCandles concerns about fees had been addressed? Senator Waterman said there had been a meeting yesterday with the city of Billings to try to work this out. Honestly, this is another policy decision. The task force decided that never will small and rural public water systems in the state of Montana be able to fully fund their own programs. Financially they just can't do it. They will always be subsidized by urban water systems. That is how the fee schedule is designed, and Billings is the hardest hit. Billings would like to see the fee reduced to 1/10 of what is proposed, or $7500. This would mean that small water user systems would have to have their fees increased. Billings' proposal would have small water user fees go to about $150 in order to absorb the difference. The DHES position is that this will be a burden on the small systems. A rational judgement can be made that this is fair, but there is a DHES concern. The other option is to fund this out of General Fund dollars. The feeling was that money to do that is not available.

Senator Thayer said he had several questions on the penalty section. The amendment cuts it from $1000 to $500/day. Even $500/day is a lot for small communities to come up with in a short planning period. What is the lead time to bring a water system in compliance? Does the DHES just go in and fine them? The next section imposes a civil penalty of $10,000, and he thought these were just unreasonable penalties. For the program to pass it needs to be some reasonable fashion. Are these penalties greater than the EPA's if they had primacy? Senator Waterman deferred the questions to the DHES. Steve Piltcher, Administrator Environmental Sciences Division, DHES, and prior to that he spent many years at the Water Quality Bureau as Chief. Including enforcement authority in the bill is the downside of any program. A regulatory program in order to be successful has to have that component. The way the DHES views enforcement response is that we do not just go out after a violation and start the penalty clock. Enforcement response historically in the DHES has taken a series of steps: #1 the first concern after finding a problem is to insure the safety of the user of that water by helping the water supply operator to solve the problem. If there are problems that can't be resolved the DHES will send a letter to the operator asking him to look into the problems. The next higher step of enforcement response would be a certified letter. Then the option of an administrative order or issuance of an administrative penalty. The last resort, if all else fails, then we could seek a civil penalty. The civil penalty amount is consistent with the solid and hazardous waste laws and water quality laws. The important part is that this is not administratively imposed. We must ask the courts to impose the civil penalty. We would like the administrative penalty to deal with those problems that are not real serious as those that would

warrant file a complaint in district court and asking for a civil penalty of $10,000/day.

Mr. Piltcher made a comparison to the Water Quality Act, this body has considered SB-211 to SB-214 that would increase the civil penalty authority in the Water Quality Act from $10,000/day to $25,000/day constituting a separate violation. So this penalty is consistent with other enforcement response authority, but the key is that the DHES can not arbitrarily impose the penalty. We must ask and prove to the courts that it is needed. Senator Thayer said it may be consistent, but that is of little comfort for the people who have to pay the bill.

Senator Hammond asked who the court would impose the penalty on, the operator of the system, the water board, the water users? Mr. Piltcher said it would be the operator of the public water system in violation. It could be an incorporated community, a water user association for a subdivision, or whomever is responsible for that public water system. Senator Hammond said that the DHES would have authority to levy fines of $500/day on people who build and maintain their own systems? Mr. Piltcher said it would only apply to systems under the authority and jurisdiction of the Montana Safe Drinking Water law, and that would be public systems. It would not be small individual systems. This would be systems serving 25 or more people, or systems with 10 or more connections. Those systems come under the jurisdiction of the law, and would be under the enforcement authority. We need to make sure that it is clear that the administrative penalty authority would be limited to $500. The civil penalty or authority, which is comparable to the Water Quality laws, would be the $10,000. But to impose that the district court has to be convinced that the system and violations are worthy of the penalty. Senator Hammond asked who goes to jail? Mr. Piltcher said fortunately to this point no one has gone to jail. He hoped that all violations could continue to be resolved without any one going to jail.

Senator Beck asked if they had ever had a $10,000/day penalty imposed on a system, and for how long? Mr. Piltcher said there is not penalty of that amount under Safe Drinking Water laws because at the present time the only authority we have is criminal sanction. We have had the civil penalty authority in Water Quality laws for years, and he didn't know of a case that the court imposed $10,000. We may ask, but then we negotiate with the responsible party for a more reasonable amount that considers the violators attempts to achieve compliance. Senator Beck asked about the new addition of water dispenser or other water supplies. What is a water system designed to serve 10 people? Mr. Piltcher said an example is a trailer court that is constructed with 20 hookups, but the operator only has nine trailers, and thinks he does not have to comply. He has the capability of serving 20 people, and if the connections are there and the system is capable, the chances are that it will be used at some time. This is just a clarification. Another issue is

the fallout shelters of a certain religious group in Montana. There has been considerable discussion of the system designed to serve a portion of their facility, and this answers the question. If you build a system designed to serve more than 10 connections or 25 people then it is a public water system. Senator Beck wanted this clear in the bill because he didn't want someone to say that a 3-5hp pump is a public system. Mr. Piltcher said it is not the capacity of the pump it is the rest of the system. The piping system, if it went to ten unoccupied homes, it would be a public system.

Senator Eck asked if the EPA enforced this what would the penalty fees be? Mr. Piltcher said that they have penalties that approach $10,000/day which is significantly higher that anything we are talking about here. He said he would confirm that number.

Senator Thayer said some trailer courts might only have 9 occupants on a system designed to have 50, would this be a public system? Mr. Piltcher said that this situation would be considered a public system, unless the operator of the court disconnected all but those nine hookups. Possibly the boom bust economy were he did not utilize the entire 50 hookups for 5 years, so he might elect to disconnect anything beyond the 9 connections, and make it a non-public system. Senator Thayer said it would be better if the bill would take out the uncertainty by defining it as the number of units being served rather than the number of hookups designed? Mr. Piltcher said the problem with that is a system with the capability of serving more than 10 and has been using it, but when DHES goes out and talks with him he only has 9 today. Then the next day he has pulled in 5 or 10 more trailers and is operating what is normally a public system. This is just an attempt to clarify it. If you intend to use it as a public system, then you will be reviewed and regulated as a public system.

Senator Hammond asked how Butte Water would be handled if this bill were in place? Mr. Piltcher said Butte is an excellent example. We have been working for 2 years, and Butte still doesn't have good water. They have safe water, but whether it is good enough is the question. All we currently have authority to enforce is criminal action. If Butte Water knew that the DHES had the option of $10,000/day civil penalty they would be more receptive to cleaning up the algae, etc. that comes from there system.

Senator Beck asked about why bottled water companies are covered in this bill? Mr. Piltcher said a water bottling company will produce water that will serve more than 25 people, and these people deserve the same protection as those of a public water system.

Senator Harding said she was on a long range building committee that heard testimony of how broke small areas are, and the penalty clause would cause them to come with legislation just to

cover the fees and fines. Fort Shaw has 70 households and problems from sewers that they can't afford to correct. Mr. Piltcher said the point is well taken, and the DHES does not want to set up a situation where monies are recycled to pay fines that go back to the General Fund. The problem is real, and it is not a joke. We have discussed the concerns of financially strapped communities, that are going to find it impossible to meet the requirements of the state and federal Safe Drinking Water laws. We are proposing to respond in a couple of ways. There is a provision on Page 7, line 7, that says in addition to reviewing a new system, the financial viability of the system should be addressed. Let's not put a small system in a precarious situation, so down the road are going to be strapped with bills they can not pay. We are recognizing the problem already created, and we're trying to prevent any additions to that list of problems. To deal with the problems already out there like Fort Shaw is to have a strong state program where we maintain some control over the regulations they must meet. We can influence those regulations and work with those systems to give them time to comply with the new requirements. Senator Waterman mentioned that the EPA is only concerned with compliance and enforcement. These are the rules, comply. We think if the state maintains a strong role in this program where we adopt the regulations, then we will have some flexibility to work with these systems to put them on a compliance schedule. While they are on the compliance schedule, working towards a viable, safe system, does not mean they would pay a penalty all that time. As long as they are on a court ordered or agreed upon schedule to reach compliance we are satisfied with that. It is only when someone like Butte Water says they will not do anything that we would resort to either the administrative or civil penalty.

Senator Thayer said he serves on a local government policy committee that has already identified an excess of $100 million in work needing to be done to bring some areas into compliance. These communities don't have borrowing capacity right now to solve these problems. There is a bill in the hopper that tries to address that. He did not oppose what the DHES is trying to accomplish, but Mr. Piltcher's goals and plans are great, but he might be gone. Someone else might interpret the law just as it is stated, $10,000/day, final. Senator Thayer said he believed in doing things that are prospective. The part that deals with new systems is great, but when you already have $100 millon dollars of problems that can't be dealt with now, and we are going to pass something to kick them in the teeth that much more. Mr. Piltcher said that Senator Kennedy is very cognoscente of the costs and burdens being imposed on communities. He emphasized the financial situation that these communities are in. That is not necessarily changed by this legislation. The Federal Safe Drinking Water Act and the amendments of 1986 are coming down the road. Regardless of this bill they will be here. We are saying that a strong state program as proposed in this bill gives us some opportunity to control the downhill slide. Without it the requirements are still there, and the communities will still face

the financial situation. We are hopeful that we can work with those communities to come up with some solutions. In the waste water area, we have had 25 years of financial assistance programs that have granted or picked up 90% of the cost of building waste water or sewage treatment plants. There have been few or no effective similar programs to deal with water systems. As a result, many of our water systems are antiquated, and the cost of repair is mind boggling. He did not know how we will get over that, but he was trying to point out that this bill will not change this. As he sees it, a strong state program gives us some opportunity to influence the scheduling of when the rock comes down the hill, and to adjust it to take into consideration some of these concerns. The EPA does not care about the economic burden. They have made the decision that these requirements are going to be met. EPA says it is just a matter of counting the beans. You are in compliance or you are not. They do not meet with the communities, advise them for better operation to come into compliance because this is not their job. They are just there to enforce and insure compliance with the laws.

Senator Thayer said accepting everything he'd said, it still does not answer what happens when this is put in statute. Then the DHES can say we're sorry, we'd like to work with you or defer this, but the law says you have to be fined. Would it not make more sense to put wording in for a lead time to allow the DHES not to assess penalties? Mr. Piltcher said there is one word in the bill, "may", that makes it discretionary to penalize, and it does not back the DHES into a corner. They may impose a penalty, but they are not obligated.

Senator Hammond said he was trying to conjure up the different problems out there already. If he voted for this how would it affect those people in rural Montana, and their source of water during drought times. They check the water every month, but it is not fit for drinking, so they use it for lawns and crops, and haul their drinking water. When the water is high, they don't have a problem. They pay $120/month for water now, and he would have to go home and tell them that someone is going to check them out. He'll have to hide for a few weeks. The Butte situation might have been helped, but if we pass a law, and impose it on everyone with different situations. Senator Thayer is right, once it is in law it can be held over their heads.

Mr. Piltcher said it is difficult to enforce public water safety in Montana because of the wide range of public water systems. In some areas of Montana where any water is better than none, and people try to make do with what they have. In rural areas people pay a lot for water that is not good, but it is wet and it serves most of their purpose most of the time. It is difficult to regulate that type of system the same way that the city of Billings with a sophisticated treatment system, trained technicians, and the Yellowstone River to supply the water. So it makes it difficult for the DHES and the Legislature to pass legislation that regulates the majority without having an adverse

impact on the minority. We understand this, but he is not sure that there is a bureaucratic solution to all of these answers. The point is well taken, and it is difficult to manage all different types of systems. This bill is trying to cover a large part of the public water systems.

Senator Beck said where would this bill be used? Would the DHES go after Dennis Washington and Butte Water Supply right now? Mr. Piltcher said he did not see the DHES changing how they do business. Butte has a suit filed against them, and currently Mr. Washington and Butte Water Company only face a $500 criminal penalty. If we had civil authority we would go to a judge and prove our case. Using the civil penalty of $10,000/day would probably get his attention. We would be using our same operating procedure, but we would have a bigger tool to enforce it. Senator Beck asked if civil court procedure would be easier to use? Mr. Piltcher said that it would be better, and that the criminal court is not protecting the citizens. The DHES would still have to parade a bunch of witnesses with their water jug with crud in it, and say they are trying to eliminate, but the Water Company is not cooperating. We are asking the court to use the civil penalty to get his attention. We would have to convince the court to impose the penalty.

Senator Beck asked what the criteria to implement this program is? Mr. Piltcher said Helena is a good example. Their system was a good system that was ignored too long. DHES worked with Helena for years, and when they finally agreed to build the Ten Mile Treatment plant it cost the city of Helena $8 million dollars. If they had listened earlier, or the DHES would have had the authority in this bill, it might have been constructed earlier and cheaper.

Senator Thayer asked if the statement of intent could be amended to say that the Legislature recognizes the existing problem of over $100 million to bring systems into compliance. The DHES would still have the authority, but the pre-existence of the problems would be stated in the legislation. Mr. Piltcher said he would like to increase the committee's comfort level with this bill, and if amending the statement of intent will provide that he had no problem with it. The statement can say that this is how the DHES does it now, and how it will be done in the future. He said he was sure an attorney would caution him not to say that, but the DHES understands the legitimate financial concerns. They just don't want communities to plead poverty to delay or go around improving their systems. Jim Melstad, DHES, agreed that this amendment could be made.

Senator Thayer asked about the situation in Cascade County where an honest effort has been made to come into compliance? Mr. Piltcher said that the Cascade situation would take a long time to explain. Cascade County is in a dilemma. DHES and Cascade County have worked long and hard, but we seem to be taking different tracks. Would penalties be imposed on Cascade County?

Probably not because progress is being made, and it is the classic example of limited resources. Cascade County did have an opportunity to take grant money to improve the entire system. Political opinions differed, and they lost those grant monies, so now Cascade County will have to foot the bill. We asked that you not use Cascade County as an example.

Senator Bengtson had returned from another hearing, and she questioned the equity of the fees across the wide range of systems. Is this fee structure equitable? Bruce McCandles had questioned the fees paid versus the services provided. Will the fees be uniform to the services provided? Mr. Piltcher said that this bill does not achieve equity in fees. This bill sets up procedures to develop an equitable system. It was acknowledged that the larger communities would pay more than the smaller communities. We are not trying to develop this system at the cost of the larger systems, but even $1000 for a small rural system becomes a tremendous burden as compared to a large sum for the city of Billings. The task force looked at several choices for generating the funds to support a program of this magnitude, and they recommended the per/connect charge to achieve equity. Granted that Billings has many more connection than Townsend. This does not equate to equal service, but there is some equity as to the way fees are generated. He acknowledged her concerns that some of the large communities may be paying a disproportionate share versus the services they get in return.

Senator Waterman said that the top nine municipal users would pay about 50% of the cost. Mr. Piltcher said this was correct.

Senator Hammond asked what services would be provided? Mr. Piltcher said water systems are paying to be regulated which is not much of a privilege, and they are also paying for the state of Montana to participate in the development of the regulations that control their destiny. Otherwise the EPA would do it. They are also paying for some inspections, operational assistance and training support. We recognize communities like Billings have a large, well trained staff with training programs of their own. We would still work with them to insure that the people in Billings are provided with high quality water.

Senator Bengtson asked to introduce Joe Steiner of Billings to clarify the Billing's position. Mr. Steiner said he was a member of the Governor's task force, and he does not oppose the state retaining primacy. Billings opposes the equity of the fee structure. We feel the fee proposed is a "back door tax". If the state health is important then it should be funded through the General Fund. Billings proposed a cap. Based on the services we have received in the past the cap would still mean that we pay twice as much as the services we would receive. Currently under this bill, Billings would pay $75,000, and this is the highest fee assessed against a municipality in the entire nation. This is not equitable. We recognize that we spend $7 million to provide our own expertise. We are not against the

health of Montana, but we just strive for some equity. The other thing that has not been discussed that Billings recommended is that the water system should be able to pass this assessed fee to the consumer without having to go through a PSC hearing. The private water suppliers expressed this in the meeting with the DHES yesterday, that they wanted the ability to pass this fee on without having to go through the requirements of the PSC.

Mr. Steiner wanted to address the penalties that everyone seemed concerned about. As a regulated entity, and we do not feel threatened by these penalties. We have never been stomped on, and we have violated our discharge permit on occasion because of mistakes and errors or equipment failure. We have repaired it, and no one from the DHES has assessed a penalty against us. We have been under the $10,000/day waste water penalty, but this does not cause us concern. We feel the state needs a state run, state mandated program. We do not feel the fee to be assessed is equitable to the 9 communities that will pay 50% of the program. The top 9 would pay for 55% of the population of Montana, and we feel there are other mechanisms that could be used. We recognize that this could be done in the Administrative Rules Process, but we felt some equity should be established in the statute.

Senator Thayer asked what Mr. Steiner would think of leaving the fees as is, and giving a credit back to the water supply systems that are in compliance and providing their own services? Mr. Steiner said that might work. Senator Waterman wanted to clarify that the purpose of the fees is to generate funds to run this state program, so money for credits might be equitable, but where would lost revenue come from?

Senator Beck asked if the $135 million to run the Billings system is from tax payers or was any of it from grants? Mr. Steiner said 100% is taxpayer dollars. Senator Beck said coming from a small community, that he did not feel it is equitable that the big cities would be given credits, everyone pays equal or we should kill the bill.

Senator Hammond said that he is determined that this bill is only going to teach, but not help those communities to get the job done.

Senator Bengtson said she has heard so much about state primacy. She isn't sure that Federal primacy might be better than creating a huge bureaucratic regulatory agency that is going to come out and tell people what they already know. If they had the money to do anything about it, they would.

Senator Beck said this threat from the Federal Government has been heard before, and maybe we should see what they come down with. He agreed with Senator Bengtson.

Senator Waterman said that there are several issues that need to

be addressed. The DHES will work on further information or amendments. There are key issues to be discussed" #1 do we want state primacy. There are two states that do not have primacy: Wyoming and they have serious concerns that the state tells them one thing and the EPA says something else, and Indiana is trying to re-establish primacy because it has not worked having given it up. Oregon operated without primacy for about 5 years, and it was a disaster, and they have re-established primacy. This is a key decision we need to make, and this is what we are here for. We have a recommendation by a committee established by the Governor, and she has a number of support letters from water systems in Helena and Billings. Billings is concerned about the fees, but you heard them say they want primacy to stay in the state. Rural water users testified that they want the state to maintain primacy.

Another policy decision we need to make is how do we want to pay for this if we want primacy? Do we want the fees that have been strongly recommended based on the feelings that the General fund increase equates to an increase in taxes. These are decisions we need to make. You've heard comments that the state of Montana would fund 1/3 of this from the General Fund where most states fund about 2/3 of it. This is certainly an option.

Senator Bengtson asked if there was a phase in? Senator Waterman said that we are hopeful that by enacting this program the EPA will accept this. Senator Bengtson said that frankly she was sick of fees, that everything is fees. Natural Resources has $2 million in fees. Senator Waterman said there are fees everywhere because the feelings are not to increase taxes statewide.

Senator Kennedy wanted to say that it was a pleasure to have Steve Piltcher on the carpet! For four years as he was mayor, Steve had him on the carpet. It's a pleasure to be on the other side.

Senator Waterman asked Senator Beck if he needed additional information on the bill to reach a decision? Senator Beck said no, but if the fees are played with through amendments he will oppose the bill. Senator Waterman said if other proposals for fees or amendments are needed she would work with the DHES, Connie Erickson, etc., so this bill can be worked through.

Senator Hammond said the same thing was done with solid waste disposal, and his constituents have been harassed until they see red when they hear about a state bureaucratic inspector.

Senator Thayer said if we carry through with this bill he would like to see additional language in the statement of intent concerning the existing $100 million dollars worth of problems. He also thought that each day of a violation constitutes a separate violation at the cost of $10,000/day civil penalty was unreasonable. Senator Vaughn asked if there is a bill to increase the penalty to $10,000 under water quality laws? Mr. Piltcher

said that there is bill to increase the water quality penalty from $10,000 to $25,000/day. This language in SB-407 is simply copied from water quality laws that state each day constitutes another violation.

Senator Kennedy asked what the EPA penalties actually are? Mr. Piltcher said the EPA can assess up to $5000 total administrative penalties, and civil penalties can go up to $25,000/day under the federal law.

Senator Bengtson said she would like to address a cap on the fees. Senator Waterman asked if she wanted it per/hookup or a cap on total amount paid by a public water system? Senator Bengtson said she wanted a cap on the maximum charge per public water system. The DHES and others will work on these figures.

Senator Waterman said that she felt that a certain amount of money is needed to start and operate this program, so the difference must be made somewhere. Senator Bengtson said they could just go slower, spend less. Senator Waterman said the way the bill is written they need money to enforce the regulations. We need to come up with some options: #1 make up lost revenue out of the General Fund, or #2 increase the minimum from $100 to $1000 for small systems. We need to give them direction.

Senator Eck asked if there could be no more than $1.00/hookup? Senator Waterman said that the bill is based on $3/connection. Senator Eck said that Billings has more than 75,000 people, and that would be a maximum. Senator Waterman said the $75,000 from Billings is based on $3/hookup/year.

Senator Kennedy would like C. Erickson to address the ability of the public water system to pass on these fees without having to go before the PSC for approval. Senator Waterman said that Billings had wanted to be able to pass the fee/connection to the users without going to the PSC for a request.

Senator Kennedy said having dealt with water quality bureau that the department is good to work with, and they have never imposed the maximum fee. You are always given the option to do what is right without penalties. Senator Waterman said that the testimony from water users and systems given did not express concern over the penalties. We are addressing water pollution, and the fast clean up of a problem.Senator Bengtson said the concern is how to pay for it.

ADJOURNMENT

Adjournment At: 5:05 p.m.

ELEANOR VAUGHN ,Vice-Chairman

JOYCE INCHAUSPE-CORSON, Secretary

EV/jic

(OHES)

Proposed Amendments to SB 407
First Reading Copy

STATE LOCAL GOVT. COMM.
EXHIBIT 2
DATE 3-7-91
BILL NO. SB-407

1. Page 1, line 23
Following: "ACT;"
Insert: "AND"

2. Page 1, line 25.
Following: "MCA"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 9, line 19.
Following: "fees"
Insert: "-- department assessment and opportunity for appeal"

4. Page 10.
Following: line 10
Insert: "(4) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the department's fee assessment under this section.

(5) The owner of a public water supply system may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department fee determination under subsection (4). The appeal to the board must include a written statement detailing why the department's fee assessment is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(6) If part of the department's fee assessment is not disputed by an appeal filed pursuant to subsection (5), that part must be paid to the department upon written request of the department."

5. Page 12, line 13.
Strike: "$1,000"
Insert: "$500"

6. Page 12.
Following: line 16
Insert: "(7) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, apply to any hearing before the board under this section or [section 4].

7. Page 16, lines 12 and 13.
Strike: section 12 in its entirety

COPY

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 3
DATE 3-7-91
BILL NO. SB-407

Office Memorandum

March 7, 1991

TO: *Esther Bengtson, Chairman*
Senate Local Government Committee

FROM: Jim Melstad, Public Water Supply Program Manager

SUBJECT: Attached Public Water Supply Task Force Report

At the committee meeting on February 19 in which you considered Senate Bill 407, there may have been some unanswered questions about the bill and about maintaining Primacy for Montana's Public Water Supply Program.

The attached Public Water Supply Task Force Report is a complete summary of what transpired during the four meetings of the Task Force last summer. As you are aware, the Task Force concluded that Primacy should be retained in Montana for the Public Water Supply Program. I realize that you are very busy and may not have time to read this. In any case, the report represents the considerable efforts of the Task Force that led to their final recommendations.

We would be glad to try to answer any questions that you may have regarding the bill and the program. You may contact Dan Fraser, Water Quality Bureau Chief at 444-2406, or myself at 444-4549. Thank you for your consideration.

WHY DID THE PUBLIC WATER SUPPLY TASK FORCE DETERMINE IT WAS IN THE BEST INTEREST OF THE STATE TO RETAIN PRIMACY?

A. Public Health Need:

- o Acute health problems:

  Documented waterborne disease outbreaks at White Sulphur Springs, Red Lodge, Big Sky & Missoula.

  Suspected outbreaks at Choteau, Helena, Butte, Bozeman, Whitefish & Glendive

  -These systems are in the top 2-3 % of Montana's PWS's- the "cream of the crop"

  -no epidemiological work being performed - >50% of our groundwater systems are very vulnerable to contamination - many surface water treatment plants are doing a poor job - many surface water sources have not treatment other than chlorination -

- o Chronic health problems:

  -**Contamination events** involving cancer-causing organic chemicals at Missoula Valley, Helena Valley, Gallatin Valley, Cascade, Lockwood Water Users Assn.

  -Very few systems have sampled for organic contaminants and many of our systems are vulnerable to this kind of contamination.

- o Compliance problems:

  -More than 50% of Montana's community systems have compliance problems - most of these problems are not particularly significant and can generally be handled by technical assistance and training rather than enforcement.

B. What are the tools government has to address the problems? * see note below.

o Inspections and sanitary surveys o Construction standards and engineering reveiw o Operator and administrator training o Technical assistance to PWS's o Emergency response o Public education o Technical assistance to owners of private wells o Special studies	**Preventive (State)**
o *Tracking compliance with the regulations* o *Enforcement*	Reactive (State and Federal)

* All of these tools are used by the state program. If EPA were to take over they would limit their activities to those two in bold.

REPORT TO DHES, GOVERNOR STEPHENS, AND THE 1991 LEGISLATURE
BY
MONTANA'S PUBLIC WATER SUPPLY TASK FORCE

I. INTRODUCTION

Among the many uses of groundwater and surface water in Montana, the most important is for drinking water. All Montanans have a right to an adequate supply of water that is safe to drink.

Montana has had a Public Water Supply Program since 1907 when outbreaks of waterborne disease and associated deaths moved its legislature to pass the first law regulating public water supplies. Federal regulation of water supplies did not begin until 1974 when Congress passed the Safe Drinking Water Act (SDWA). The SDWA was implemented in 1977 when the Environmental Protection Agency (EPA) promulgated the National Interim Primary Drinking Water Regulations. That same year the DHES was granted primary enforcement authority (primacy) for the federal program. Primacy was desirable because it brought oversight and enforcement of the federal regulations to a state agency. This agency is more accessible and responsive to Montana problems than a federal authority could be. Montana's primacy program is supported by both state and federal dollars.

The Department of Health and Environmental Sciences (DHES) is responsible for administering the Public Water Supply Program in Montana. This program's goal is to assure that water from public systems is bacteriologically, radiologically, and chemically safe to drink. Today this program faces serious new challenges as more toxic contaminants and disease-causing organisms are being found in consumers' water supplies. Accordingly, public concern about the safety of drinking water has grown. In 1986 Congress responded to this public concern with the 1986 amendments to the Safe Drinking Water Act (see Appendix I). These amendments mandate the following:

1. Disinfection of all public systems.
2. Filtration of all surface water systems.
3. Substantial increases in the monitoring of drinking water quality.
4. Establishment of drinking water standards for 83 contaminants by 1992 and nearly 200 contaminants by the year 2000.
5. Establishment of a state wellhead protection program.

contract add 1.0 FTE to the available work force, for a grand total of 13.5 FTE's.

Funding

Confirmed funding for the program in fiscal year (FY) 1990 was $623,000. Of this funding, approximately $119,000 (19%) was derived from the state and $504,000 (81%) from an EPA grant. Because the EPA grant requires matching state funds at a 3:1 ratio, funding of DHES' Subdivision Review and Water/Wastewater Operator Certification programs have been used as "soft" match in recent years. In the Spring of 1990, the DHES was reorganized to combine the Public Water Supply Program and the Subdivision and Operator Certification programs within the Public Water Supply Section. The intent was to manage closely related functions more efficiently and firm up matching funds. These added programs have contributed four additional FTE's to the Public Water Supply Section, but have workloads beyond their staffing levels.

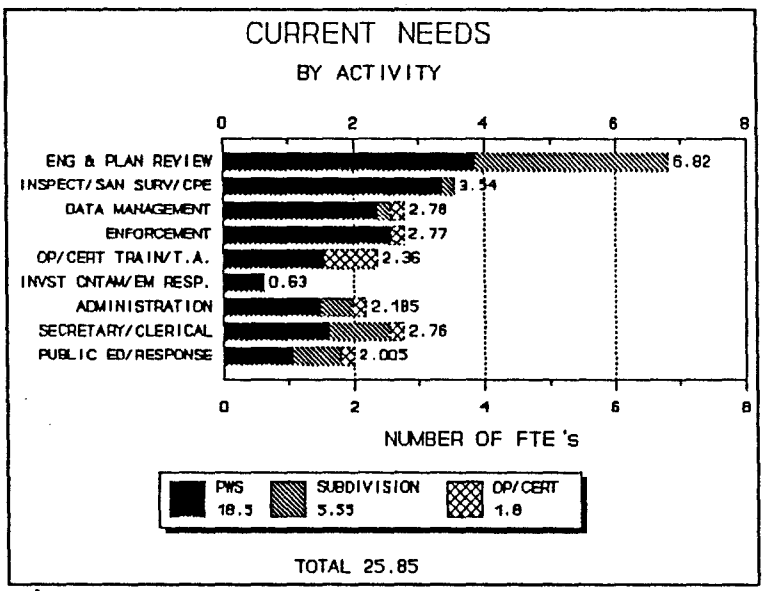


Figure 1

Figure 1 shows the existing workload in each program of the Public Water Supply Section. Our existing staff consists of 18.5 FTE's (16.5 FTE's on staff, 2.0 on contract) with a need for 25.85 FTE's.

The three programs - Public Water Supply, Subdivision, and Operator Certification - perform the following functions:

- o Inspections/Sanitary Surveys
- o Oversight of Public Water Supply monitoring and reporting
- o Enforcement of laws
- o Regulation development and adoption
- o Review of engineering plans and specifications
- o Subdivision review and approval
- o Operator training and certification
- o Data management and reporting to EPA
- o Program management and administration
- o Technical assistance to operators and administrators
- o Emergency response
- o Special studies
- o Response to requests for assistance from the public

program recently conducted by the National Association of Drinking Water Administrators (ADSWA) has recommended the state cease performing this function for the purveyors because of time and expense to the state program. Monitoring is required by the Safe Drinking Water Act, but the Act does not require collection of the samples by primacy agencies.

Enforcement

When violations of monitoring or reporting requirements occur, program staff assure that water consumers are sufficiently advised of necessary precautions and steps are taken to resolve the violation. In most cases, system owners recognize their responsibilities and correct problems promptly. When problems are not rectified in a reasonable time, the DHES initiates a formal enforcement action. This action consists of a stepped enforcement approach, starting with reminder letters and escalating to a notice of violation, an enforcement conference, and an administrative order. If these steps fail to gain compliance, the owner is referred to the DHES' Legal Division for civil action. Over the past several years, the program's demands for enforcement has overwhelmed available legal resources, making the need for a stronger authority apparent.

Regulation Development and Adoption

The DHES must assure needed standards and regulations are adopted so that necessary requirements can be enforced. Currently, the program is adopting the new federal regulations for eight volatile organic chemicals and public notification. These regulations were supposed to be adopted by January 1, 1989 in order for the state to retain primacy and to ensure receipt of EPA grant funds. The state's failure to meet these new requirements has forced the EPA to notify DHES that formal steps to withdraw primacy are forthcoming unless adequate resources are dedicated to the program.

Review of Engineering Plans and Specifications

The review of plans for proposed construction, extension, or alteration of public water or wastewater facilities is another preventive activity performed by the Public Water Supply Program. The Board of Health and Environmental Sciences is charged with the adoption of minimum design and construction standards to ensure essential water service and to protect public health. Department engineers review plans and specifications for compliance with established standards. The standards typically address such items as depth of well grouting, materials used for contact with potable water, treatment processes, and separation distances between wells and potential sources of contamination. Montana law prohibits the beginning of construction until the DHES grants its approval.

A data-management system developed for personal computers by the state of Alaska is being adapted for Montana's program needs. Over the past 5 years the program has been computer "hardware and software rich" but "expertise poor" because of the inability to obtain staff to use the hardware and software purchased for this system. The recent addition of a computer programmer to the staff and continued technical assistance from Alaska should greatly improve the program's capability in this area.

Program Management and Administration

The duties of this function include:

- Managing and planning for all three programs.
- Providing staff for boards and task forces
- Providing technical assistance to private well owners
- Budgetary work
- Writing rules for state and federal regulation implementation
- Developing, training, and supervising staff
- Establishing and monitoring compliance schedules
- Making compliance decisions
- Preparing departmental legislation.

Technical Assistance to Operators and Administrators

When standards are exceeded or operational problems arise, DHES staff provide information and technical assistance to owners and operators. At treatment plants, training to help the operator determine correct chemical dosages can improve treatment. When bacteriologically unsafe samples are obtained, the staff strives to solve the problem quickly because of the potential for an acute health risk. Assistance with start-up of emergency chlorination or boil-water instructions can be invaluable, especially for small systems. Technical assistance by staff helps to solve problems rapidly and in some instances can avert violations and risks to public health and safety.

Competent operation of surface water treatment plants is especially critical because of surface waters' vulnerability to contamination and the complexity of the treatment process. Most larger surface water plants are able to attract and retain knowledgeable and competent operators. Small systems, however, have great difficulty retaining competent operators. These problems are worsened by managers and administrators unaware of the critical needs of water treatment plant operations.

Because Montana has long recognized deficiencies associated with treatment of surface waters, the program has developed an intensive

III. MONTANA'S REGULATIONS

Montana currently has regulations for 22 contaminants. The number of contaminants each PWS is responsible for monitoring depends upon its size, source, and its designation as a community or non-community supply. Community PWS's are subject to regulation for contaminants which have both acute and chronic health effects while non-community systems have to monitor for only those contaminants which may indicate acute concerns (coliform bacteria, turbidity, and nitrate.)

(See Appendix II for a summary of current regulations and the health effects of the regulated contaminants.)

IV. MONTANA'S UNIVERSE OF PWS's

The inventory of Montana's public water systems includes a grand total of 2,491 systems, 2,119 of which are active at this time. Community PWS's comprise 716 of this total while the remaining 1,403 are non-community systems. (Figure 2)

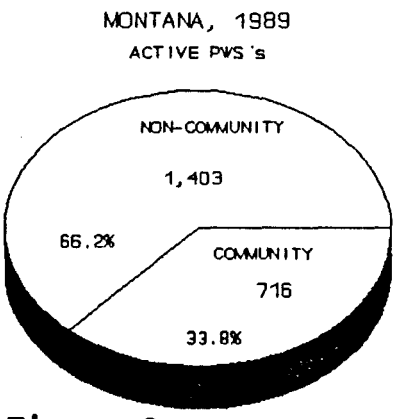


Figure 2

In terms of size of system versus population served by Montana's PWS's, Figure 3 illustrates that while we have a large proportion of small systems, our few large systems serve the bulk of our population. Over 96% of Montana's community systems serve less than 3,300 people and are classified by federal standards as "small." About 383 of these systems (54%) serve fewer than 200 people, and 260 (36%) serve between 100 and 1,000 people. These small systems account for the vast majority of the violations of our current standards and for a variety of reasons, including diseconomies of scale, will suffer most from the impacts of the 1986 SDWA Amendments.

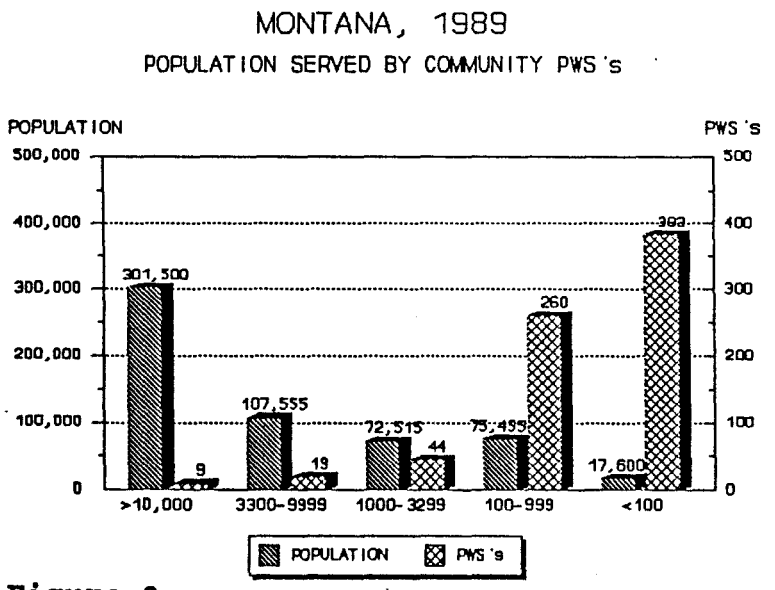


Figure 3

Compliance with Microbiological Standards

Montana has many PWS's which have occasional-to-frequent problems with bacterial contamination. Likewise, many more PWS's fail to monitor for bacteriological quality at the required frequency. Figures 6 and 7 show that the non-compliance in these two areas alone are more than double the national average for violations of all standards.

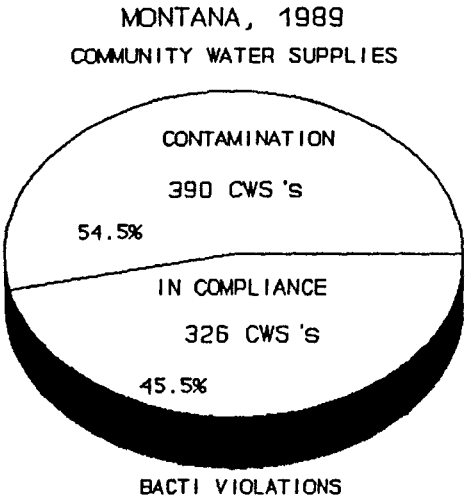


Figure 6

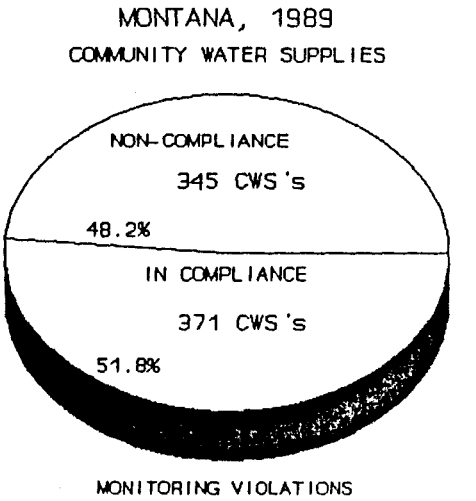


Figure 7

These startling statistics make it clear that Montana's PWS's show significantly more non-compliance than would be expected from the EPA figures. Several factors contribute to this situation, including a general lack of concern by owners and operators of small water systems, the fact that Montana does not require full-time disinfection of groundwater systems, and common usage of shallow and vulnerable water sources. Figure 8 illustrates the vulnerability of Montana Sources in showing the percentages of Montana PWS wells drilled to various depths. Nearly half of these wells are 25 feet in depth or less.

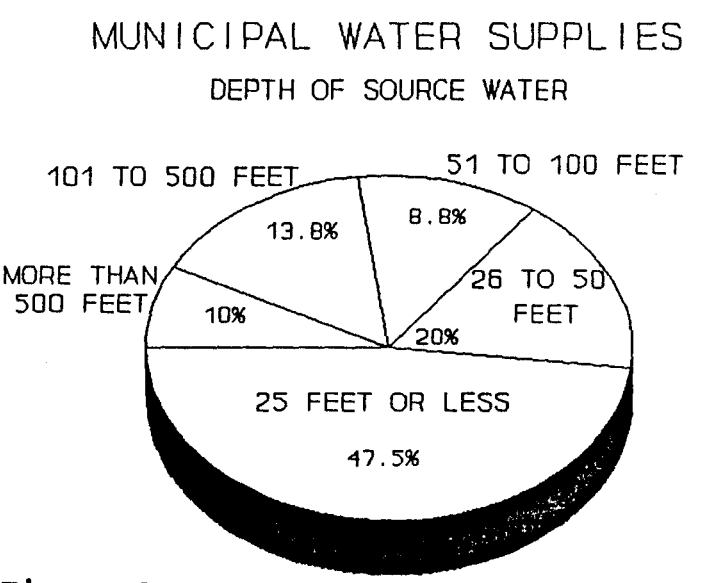


Figure 8

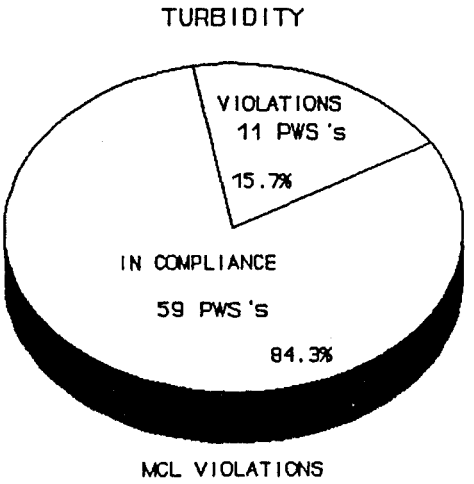


Figure 11

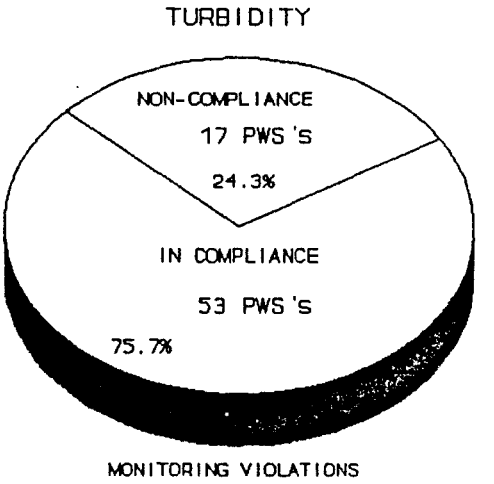


Figure 12

Operation of surface-water treatment plants is complex and requires operators who are very knowledgeable and competent. The best designed and constructed filtration plant will not produce acceptable finished water without constant scrutiny by well-trained, professional operators. Montana's Operator Certification Program assures that operators keep current with the newest regulations and technology. Plant visits by trained DHES staff reinforce proper operating techniques through personal training.

Compliance with Chlorine Residual Requirements

All systems using surface-water are required to disinfect with chlorine and report the results of daily chlorine residual monitoring to the DHES. Also, groundwater systems that have had a record of contaminated samples can be required to chlorinate. Compliance statistics of the 144 community groundwater systems required to chlorinate are shown in Figure 13.

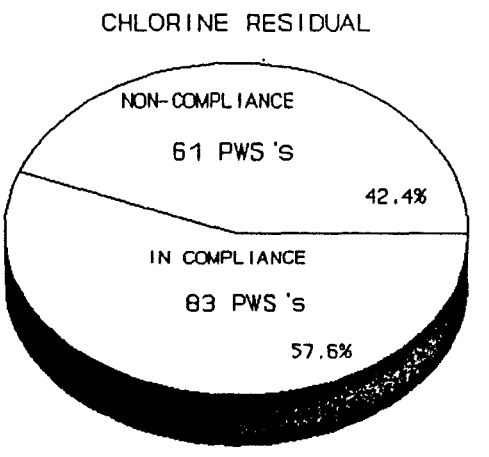


Figure 13

Compliance with Standards for Organic Contaminants

Surface-water systems are required to monitor for pesticides and herbicides. Systems which serve more than 10,000 people and who chlorinate must monitor for Total Trihalomethanes (TTHM's). Although limited, monitoring has rarely shown problems with contamination by these organic chemicals.

VII. IMPACT OF THE NEW REQUIREMENTS UPON MONTANA'S PUBLIC WATER SYSTEMS

Clearly the new regulatory requirements will have a far-reaching impact upon public water systems. The extensive monitoring done will cost several hundred dollars per year per system. While this cost will present no particular burden to Montana's few large systems, it will be very burdensome to the many small community and non-transient systems.

Under the requirements of the SDWA Amendments, non-transient systems, such as those used by schools, will be treated essentially as community systems and will be responsible for supplying water that is in compliance with those rules governing long-term, chronic health risks. The creation of this new class of PWS will increase the workload and costs of both the program and the PWS's by roughly 35 percent. (Figure 15)

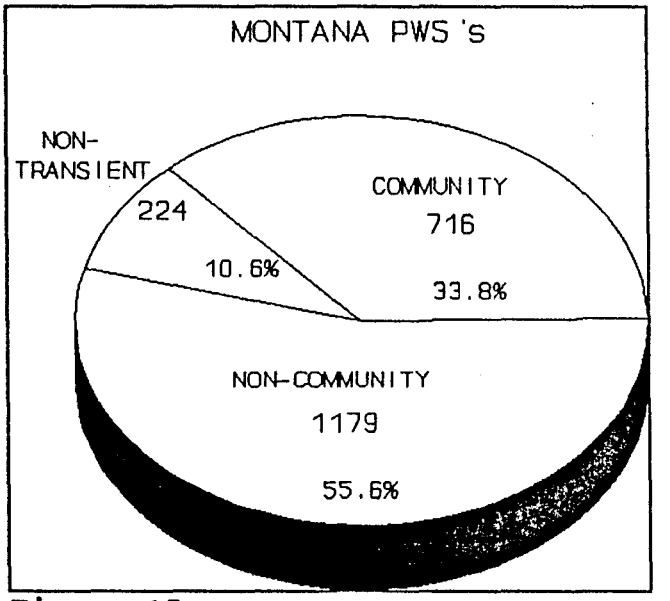


Figure 15

Coliform Rule

Increased coliform monitoring requirements are expected to detect additional problems with the bacteriological quality of some systems. This will be particularly true of non-community systems which now monitor only on a quarterly basis and which may be required to perform monthly coliform monitoring. Additionally, increased check-sampling requirements will increase violations and monitoring costs.

The Surface Water Treatment Rule (SWTR)

Most of the PWS's using unfiltered surface water will likely be required to install filtration plants. This requirement will necessitate large expenditures of funds for capital improvements for 30 to 40 community systems. Many of the existing plants will have to be upgraded to meet the more stringent finished-water requirements of the SWTR, and most existing plants will have to upgrade their operations significantly.

Approximately 30 to 40 non-community systems will be required to switch to groundwater or provide filtration. The state will be required to assess each PWS's water sources to determine which are

Disinfection and Disinfection By-Products

The 1986 Amendments mandate the EPA to write regulations which establish requirements for full-time disinfection of all public water systems. There will also be criteria by which a state will, on a case-by-case basis, be able to waive these requirements. Because of the vulnerability of many Montana sources, the dilapidated condition of the infrastructure comprising many systems, and the poor sampling record of over half the systems, it is expected over 1,000 PWS's will be required to install full-time disinfection and, in many cases, facilities for provision of contact time.

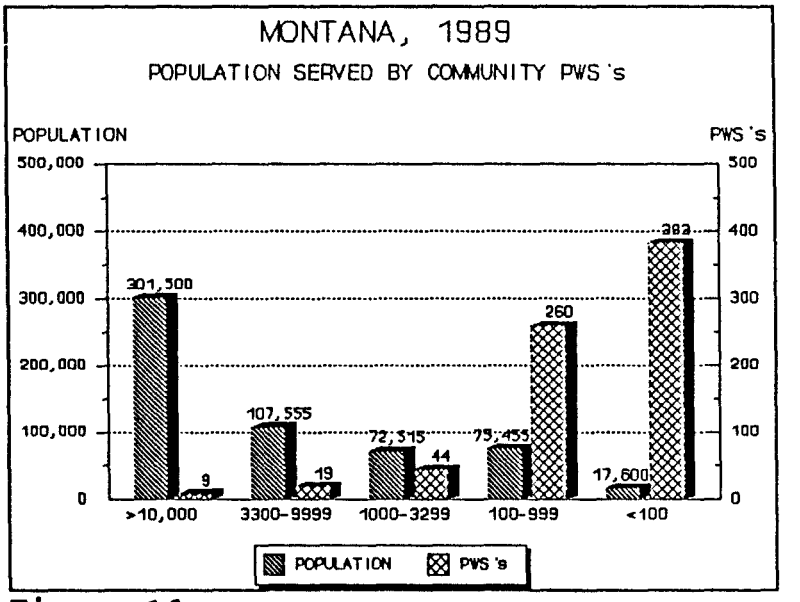


Figure 16

The by-products formed by addition of disinfectants will also be required to be regulated because many of them are suspected of causing chronic health effects. This rule is likely to be the most complex one mandated by the 1986 SDWA Amendments.

Again, it is important to note that the vast majority of Montana PWS's are small systems and will have difficulty meeting the new requirements. (Figure 16) It is therefore essential for planners, local government officials, and regulators to consider the long-term viability of existing and proposed small public water systems.

VIII. IMPACT UPON THE STATE PROGRAM

While not as overwhelming as the compliance problems faced by water purveyors, the vast increase in regulatory requirements, coupled with the complexity of the rules, will place an extreme burden upon the already-understaffed Public Water Supply Program. The following is a brief description of the program required for each major portion of the new requirements.

for elevated lead levels in homes, and no-action levels for pH and alkalinity must be met. The proposed regulations call for extensive monitoring, public education programs, and treatment when the MCL or no-action level is exceeded. Considerable oversight and technical assistance by DHES staff will be essential.

Radionuclides

These regulations are expected to be proposed in 1990 and final in 1991. Monitoring under current regulations has already discovered several potential violations. The new regulations will also cover uranium and radon gas. Limited monitoring indicates many state systems will exceed the radon gas standard expected to be in the 200 to 500 picocurie per liter range. Such problems will necessitate state action, engineering plan review and training, etc.

Sanitary Surveys

Detailed sanitary surveys are the backbone of the state's "preventive" approach to PWS surveillance. These inspections are instrumental in spotting potential problems and correcting them before the water consumer is affected. The frequencies of sanitary surveys are as follows:

Community - Municipal (cities, towns, and so on) - Every year with a detailed inspection every 3 years. Community PWS's using surface water should be inspected more frequently.

Non-Transient non-community (schools, industries, and so on) - Every year with a detailed inspection every 3 years.

Non-community-transient (motels, restaurants, parks, and so on) - Annually by contracted local health departments.

The new requirements resulting from the 1986 Amendments (vulnerability assessment, comprehensive performance evaluation, source water assessments, etc.) will require the state to spend much more time in the field working with water systems.

Monitoring and Analytical Costs

In the past, except for coliform monitoring, DHES has collected inorganic, organic, and radiological samples. In an effort to obtain data concerning the occurrence of volatile organic contaminants, DHES has covered most of the analysis costs for samples collected to date. Because of lack of funds, follow-up monitoring for VOC's is now being done at the water system owner's expense. (Special investigations being conducted to determine the causes of groundwater contamination are often conducted and financed by the DHES's groundwater program.)

Figure 19 shows the most current "best guess" of when each rule will require implementation by primacy agencies.

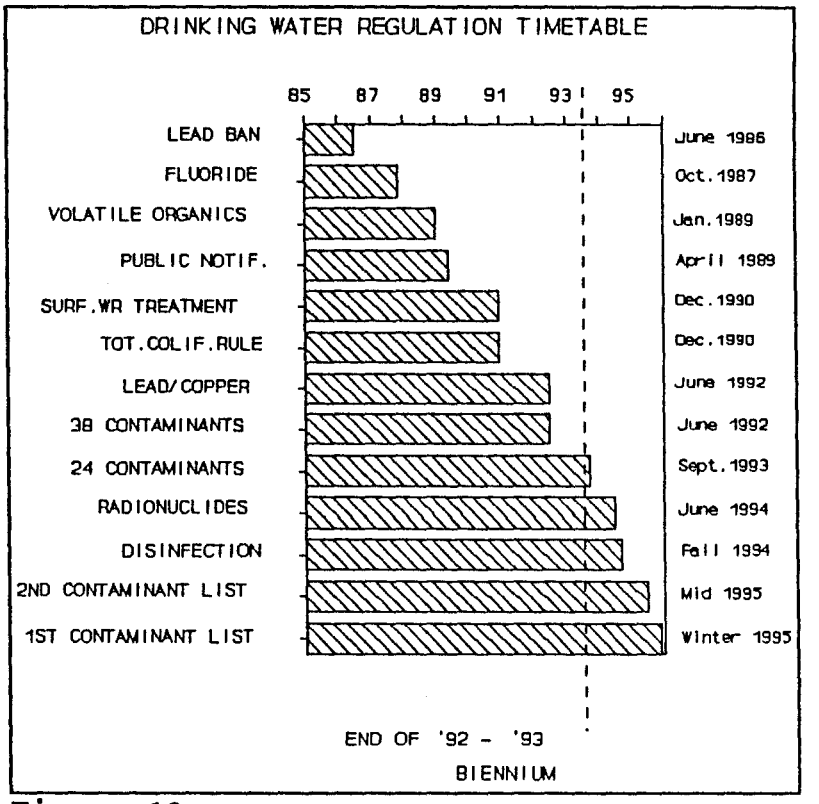


Figure 19

IX. FUNDING

During Montana's recent economic distress, the program has become increasingly more dependent upon federal grant funds for its existence. This dependency becomes even more conspicuous when one considers federal funds are used to supplement other state programs (Operator Certification and Subdivision Review) that should be self-supporting.

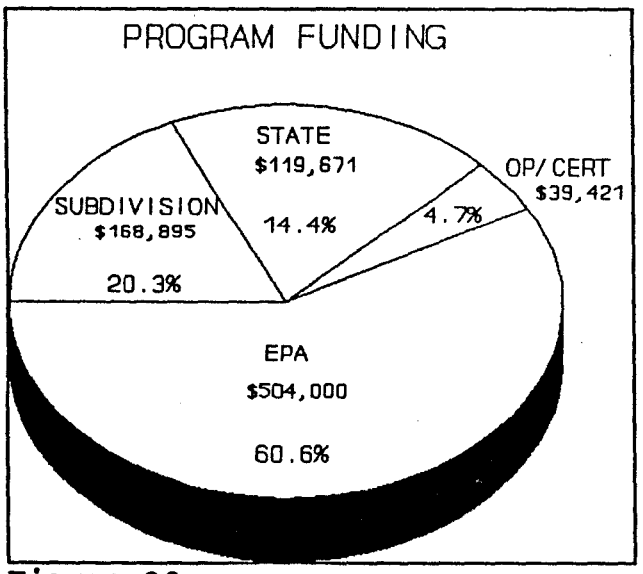


Figure 20

Figure 20 shows the extent to which the program is funded by various sources. While it is expected that the level of federal funding will increase to help pick up part of the burden of the new requirements, it is unlikely the federal government will provide funding for more than half of the program's needs.

of retaining Montana's primary enforcement authority over the federal Safe Drinking Water Act. Although this option requires expansion of the program, it is in Montana's best interest because it provides the state program necessary to protect the public health and uses federal grant monies to help pay for it.

This program would provide:

- Training and technical assistance to operators and administrators to assist them in their compliance with drinking water laws
- Sanitary surveys to promote preventive operations of water systems
- Timely review of plans and specifications for water system improvements or alterations
- Assistance to utilities monitoring source water and assessing vulnerability
- Enforcement of regulations
- Investigations of contamination events and waterborne disease
- Services and advice regarding general concerns including home treatment units

In the opinion of the task force this program is what Montanans should be provided by their state health agency. It would also meet the requirements for primacy.

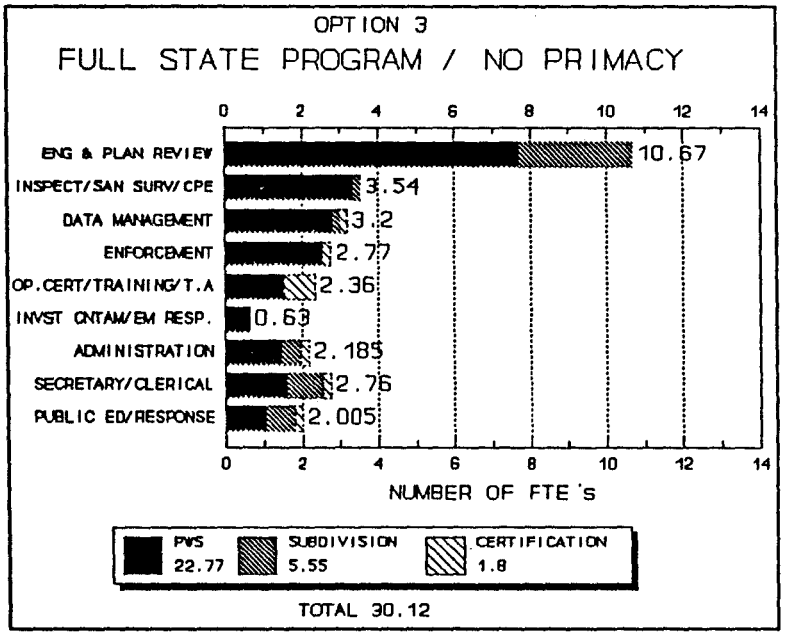
The new federal rules contain provisions whereby consumers must be kept informed of monitoring violations or contamination problems at their public water supplies. As the public becomes more aware of drinking water problems, it is prudent to have a state health department prepared to address their concerns. The Task Force considers anything less than a careful handling of these issues unacceptable. Figures 17 and 18 on page 20 illustrate projected needs for this Full State/Full Primacy Program.

The sole disadvantage of this option is federal dollars will not fund the program in its entirety. Although federal grants are expected to increase as the amendments are implemented, the program will likely not be supported more than 50% by federal monies. Significant increases in staffing and additional sources of revenue must be forthcoming to support this program.

option would also severely limit the state's ability to respond to concerns of private water users and contamination events. Since these activities would not be assumed by EPA, they would either be unaddressed, or local health agencies would have to add staff to provide the services themselves.

Option 3: Full State Program with No Primacy

Under this option current Montana laws regarding public water supplies would be retained, but would not be expanded to adopt the new federal requirements. The DHES would continue its preventive and assistance activities, but would enforce only existing Montana regulations. Water purveyors would have to respond directly to the EPA about compliance issues regarding the federal Safe Drinking Water Act. The state would also continue to provide training and would respond to contamination events and public inquiry since these are appropriate functions of a state health department. Resource needs would be about 25% greater than current program needs.

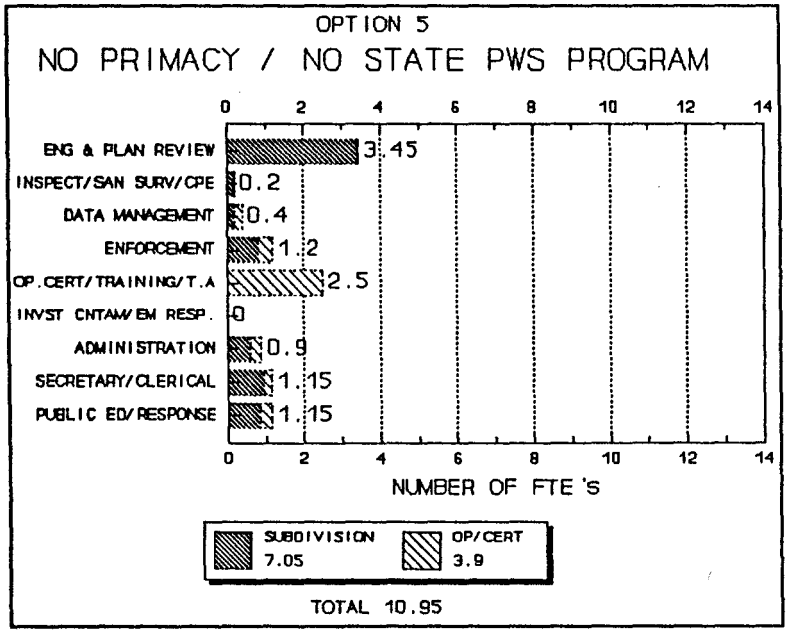


The drawbacks of this option include loss of federal grant money, since Montana would not retain primacy. The state would then have to pick up the entire cost of the program. The Task Force also believes public pressure would eventually force Montana to adopt the federal regulations because utilities and consumers would not

of Montana citizens. Although retention of training and technical assistance was strongly supported, regulatory authority at the federal level was not desired and was expected to be confusing to purveyors. In addition, loss of primacy would also remove federal funding sources for the program. Utility costs would rise as PWS's would be responsible for vulnerability assessments and source-water determinations. The Task Force believed that monetary savings did not justify endangering public health and a regression in Montana drinking water laws.

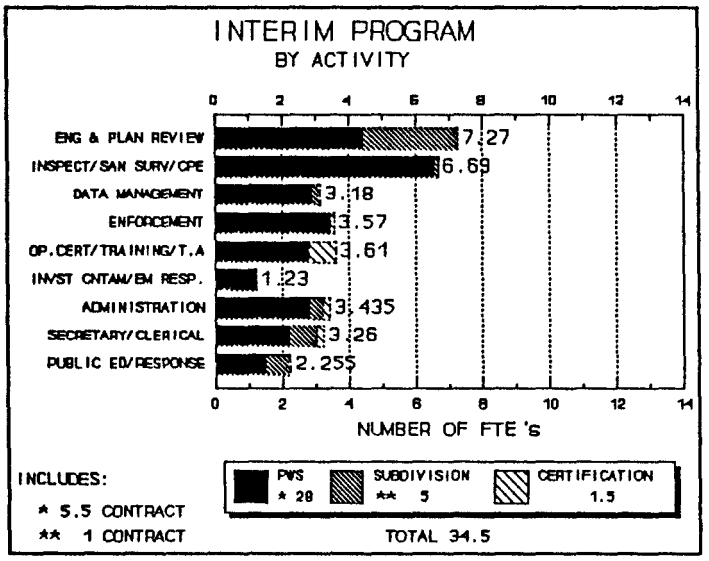
Option 5: No Primacy and No State Public Water Supply Program

This option would require repealing the existing Public Water Supplies, Distribution and Treatment law. The state would cease its technical assistance and regulation of public water supplies. Regulatory authority over Subdivision review and Operator Certification would remain intact. Operator Certification, however, would be reduced to administration of the program only, with no training provided. The Subdivision Program would consist of review and limited on-site inspection. All public inquiry, contamination response, and technical assistance would be referred to other agencies.



This option was rejected because it does not offer a responsible role for the DHES, and it severely jeopardizes public health. All federal funding would be lost, and functions previously performed to support the Subdivision Review and Operator Certification

Figure 23 provides a staffing comparison of staffing needs between the recommended interim program and the projected needs for the long-term comprehensive program.



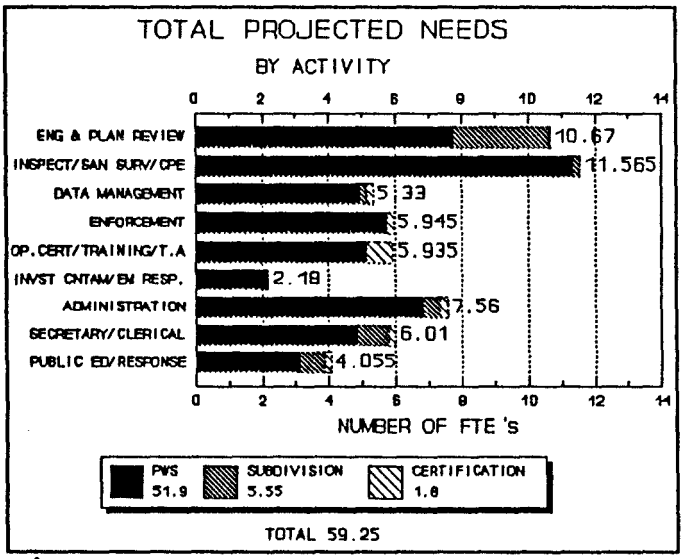


Figure 23

Of the 34.5 FTE's required for the Interim Program, 6.5 could be provided by pass-through funding to local governments, consultant contracts, or contracts with organizations such as Midwest

XII. TASK FORCE RECOMMENDATIONS

The Public Water Supply Program Task Force provides the following recommendations for consideration by the Department of Health and Environmental Sciences, Governor Stan Stephens, and the 1991 Legislature.

1. The state must provide a comprehensive Public Water Supply Program designed to minimize and prevent health hazards associated with drinking water. This program would be based upon the state's historical "preventive" activities and the requirements of the federal Safe Drinking Water Act.

2. The Public Water Supply Section should be staffed and funded to provide for the following by June 30, 1993:

	Public Water Supply	Subdivisions	Operator Cert.
DHES	22.5 FTE	4.0 FTE	1.5 FTE
Contracts	5.5 FTE	1.0 FTE	0 FTE
Total	28.0 FTE	5.0 FTE	1.5 FTE

Grant Total 34.5 FTE

3. The Sanitation in Subdivisions Act, MCA 76-4-105, should be amended to remove the $48.00 per parcel maximum fee, thereby allowing higher fees.

   Rules should be adopted to increase fees for subdivision review to support an additional 1.0 FTE above current staff level.

4. The Public Water Supply Act should be amended to give the Board of Health and Environmental Sciences the authority to adopt rules by which the department can collect fees for services. These rules would include fees for engineering plan review and a fee to be assessed against each public water system based upon the number of service connections to that system.

   Funds raised by these fees should be used to supplement existing funding of the Public Water Supply Section in order to support the 34.5 FTE recommended in No. 2.

   When services are provided by local governments, fees collected by the department, less costs of collection, must be returned to the local governments.

5. This Task Force should reconvene in July of 1991 and July of 1992 to reassess the status of the public water supply section and make further recommendations for consideration at the 1993 legislative session.

APPENDIX I

SUMMARY OF THE 1986 AMENDMENTS TO THE SAFE DRINKING WATER ACT AND THE NEW NATIONAL PRIMARY DRINKING WATER REGULATIONS

The 1986 Safe Drinking Water Act (SDWA) Amendments have made sweeping changes to the SDWA which include the requirement for EPA to issue new national primary drinking water regulations (NPDWRs) for 83 contaminants. The act also requires EPA to publish a priority list of new contaminants that may require future regulation, write rules regarding filtration and disinfection, prohibits the use of lead in public water systems, establishes wellhead protection programs and makes other procedural and terminology changes.

MAJOR STATUTORY REQUIREMENTS

* The Administrator must publish maximum contaminant levels goals (MCLGs) and promulgate national primary drinking water regulations (NPDWRS) for 83 contaminants, according to the following schedule:

  - 9 of the contaminants not later than June 19, 1987. **(done, + required monitoring of 51 unregulated contaminants)**
  - 40 of the contaminants not later than June 19, 1988. **(38 proposed in May of 1989 - also includes proposal for monitoring of another 114 unregulated contaminants.)**
  - 34 of the contaminants not later than June 19, 1989. **(the Coliform Rule became final June 29, 1989.)**

* The Administrator may substitute up to seven contaminants found in these lists, if they are more likely to be "protective of public health." **(done, see notes on following lists)**

* Not later than January 1, 1988 and at three-year intervals thereafter, the Administrator must publish a list of contaminants known or anticipated to occur in public water systems which may require regulation. **(done, see list on last page)**

* At least 25 MCLGs and NPDWRs must be proposed within 24 months and promulgated within 36 months after publication of each list (first of these is due in 1991).

* Each MCLG must be set at the level at which "no known or anticipated adverse effects on the health of persons occur" and which allows an adequate margin of safety. MCLG's for carcinogens must be set at 0.0.

* Each NPDWR must specify a MCL for that contaminant "which is as close to the maximum contaminant level goal as is feasible". MCLG and prepared MCLs are to be promulgated simultaneously.

* Granular activated carbon (GAC) is specified as "feasible" for the control of synthetic organic chemicals. Any treatment techniques found to be the "best available" for the control of synthetic organic chemicals must be at least as effective as granular activated carbon.

* The Administrator has the authority to promulgate a national primary drinking water regulation that requires the use of a treatment technique instead of establishing a contaminant level, if it is not economically or technologically feasible to ascertain the level of that contaminant.

CONTAMINANTS REQUIRED TO BE REGULATED
UNDER THE SDWA OF 1986
(83 contaminats, 25 of which are currently regulated)
(bold type denotes those contaminants currently regulated by MT)

Volatile Organic Chemicals

Trichloroethylene
Tetrachloroethylene
Carbon tetrachloride
1,1,1-Trichloroethane
1,2-Dichloroethane
Vinyl chloride
Methylene chloride
Benzene
Chlorobenzene
Dichlorobenzene .
Trichlorobenzine
1,1-Dichlorobenzene
trans-2,2,Dichloroethylene
cis-1,2-Dichloroethylene

Microbiology and Turbidity

Total coliforms
Turbidity
Giardia lamblia
Viruses
Standard plate count
Legionella

Inorganics

Arsenic
Barium
Cadmium
Chromium
Lead
Mercury
Nitrate
Selenium
~~**Silver**~~ (removed)
Fluroide
~~**Aluminum**~~ (removed)
Antimony
~~**Molydenum**~~ (removed)
Asbestos
Sulfate
Copper
~~**Vanadium**~~ (removed)
~~**Sodium**~~ (removed)
Nickel
~~**Zinc**~~ (removed)
Thallium
Beryllium
Cyanide
*Nitrite (added)

Organics

Endrin
Lindane
methoxychlor
Toxaphene
2,4-D
2,4,5-TP
Aldicarb
Chlordane
Dalapon
Diquat
Endothall
Glyphosate
Carbofuran
Alachlor
Epichlorohydrin
Toluene
Adipates
2,3,7,8-TCDD (Dioxin)
*Aldicarb Sulfene (added)
*Aldicarb Sulfoxids
(added)
Ethylbenzene (added)
Heptachlor (added)
1,1,2-Trichloroethane
Vydate
Simazine
PAHs
PCBs
Atrazine
Phthalates
Acrylamide
Dibromochloropropane DBCP
1,2-Dichloropropane
Pentachlorophenol
Pichloram
Dinoseb
Ethylene dibromide (EDB)
~~Dibromomethane~~ (removed)
Xylene
Hexachlorocyclopentadiene
THMs (now on priority list as individual compounds)
*Heptachlor epoxide
(added)
*Styrene (added)

Radionuclides

Radium 226 and 228
Beta particle and photon radioactivity
Uranium
Gross alpha particle activity
Radon

List 2: Monitoring required only for systems vulnerable to contamination by these compounds. Compounds require some specialized handling.

Ethylene Dibromide (EDB)
1,2-Dibromo-3-Chloropropane (DBCP)

List 3: The primacy agent decides which systems would have to analyze for these contaminants, which includes compounds that do not elute within reasonable retention time using packed column methods or are difficult to analyze because of high volatility or instability.

1,2,4-Trimethylbenzene	n-Butylbenzene	Tertbutylbenzene
1,2,4-Trichlorobenzene	Naphthalene	Secbutylbenzene
1,2,3-Trichlorobenzene	p-Isopropyltoluene	Fluorotrichloromethane
n-Propylbenzene	Isopropyl benzene	Dichlorodifluoromethane

* Composite sampling of up to five wells will be allowed.

* Repeat monitoring: every five years but a new list of contaminants will be specified.

* Phase in per size of system as in the proposal. Monitoring for large systems will start October 1, 1987.

* If no contaminants are detected in the first quarter's sampling, the state may not further sampling.

The 40: SOCs-IOCs-Microbials

(due in June of 1988)

SOCs

Tetrachloroethylene	Carbofuran	Pentachlorophenol
Lindane	Alachlor	Ethylene Dibromide
Methoxychlor	Toluene	Xylene
Toxaphene	Epichlorohydrin	Trans-1,2,-
2,4-D	PCBs	Dichlorotheylene
2,4,5-TP	Acrylamide	o-Dichlorobenzene
Aldicarb	DBCP	Chlorobenzene
Chlordane	1,2-Dichloropropane	

IOCs

Arsenic	**Chromium**	**Mercury**
Asbestos	Copper	**Nitrate**
Barium	**Lead**	**Selenium**
Cadmium		

MICROBIALS

Total Coliforms	**Turbidity**	Heterotrophic Plant Count
Giardia Lamblia	Viruses	Legionella

SUBSTITUTES

Ethylbenzene	Styrene	Aldicarb Sulfoxide
Heptachlor	Nitrite	Adlicarb Sulfone
Heptachlor Epoxide		

Appendix II

MONTANA'S CURRENT
PRIMARY DRINKING WATER STANDARDS

Contaminants	Health Effects	MCL[1]	Sources
Microbiological			
Total Coliforms (Coliform bacteria, fecal coliform, streptococcal, and other bacteria)	Not necessarily disease producing themselves, but can be indicators of organismis that cause assorted gastroenteric infections, dysentery, hepatitis, typhoid fever, cholera, and others; also interfere with disinfection process.	1 per 100 milliliters	human and animal fecal matter
Turbidity	Interferes with disinfection	1 to 5 NTU	erosion, runoff, and discharges
Inorganic Chemicals			
Arsenic	Dermal and nervous system toxicity effects	.05	geological, pesticide residues, industrial waste and smelter operations
Barium	Circulatory system effects	1	
Cadmium	Kidney effects	.01	geological, mining and smelting
Chromium	Liver/kidney effects	.05	
Lead	Central and peripheral nervous system damange; kidney effects; highly and pregnant women	.05[2]	leaches from lead pipes and lead-based solder pipe joints
Mercury	Central nervous system disorders; kidney effects	.002	used in manufacture of paint, paper, vinyl chloride, used in fungicides, and geological
Nitrate	Methemoglobinema ("blue-baby sysndrome")	10	fertilizer, sewage, feedlots, geological
Selenium	Gastrointestinal effects	.01	geological, mining
Silver	Skin discoloration (Argyria)	.05	geological, mining

MONTANA'S CURRENT
PRIMARY DRINKING WATER STANDARDS

Contaminants	Health Effects	MCL[1]	Sources
Carbon tetrachloride	Possible cancer	.005	common in cleaning agents, industrial wastes from manufacture of coolants
p-Dichlorobenzene	Possible cancer	.075	used in insecticides, moth balls, air deodorizers
1,2-Dichloroethane	Possible cancer	.005	use in manufacture of insecticides, gasoline
1,1-Dichloroethylene	Liver/kidney effects	.007	used in manufacture of plastics, dyes, perfumes, paints SOCs
1,1,1-Trichloroethane	Nervous system problems	.2	used in manufacture of food wrappings, synthetics fibers
Trichloroethylene (TCE)	Possible cancer	.005	waste from disposal of dry cleaning materials and manufacture of pesticides, paints, waxes and varnishes, paint stripper, metal degreaser
Vinyl chloride	Cancer risk	.002	polyvinylchloride pipes and solvents used to join them, waste from manufacturing plastics and synthetic rubber
Total trihalomethanes (TTHM)(chloroform, bromoform, bromo-dichloromethane, dibromochloro-methane)	Cancer risk	.1	primarily formed when surface water containing organic matter is treated with chlorine

February 21, 1991

PROPOSED AMENDMENT TO SB 407

OPTION 3:

Amend New Section 4(1) to read as follows:

NEW SECTION. Section 4. Board to prescribe fees. (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system ~~must be based on the number of connections to the public water supply system, although the minimum fee for any system is $100.~~ shall bear a direct and proportional relationship between the demand for a service by a public water supply system and the department's cost of providing it. Public water supply systems may, without the need for the public hearing required under Section 69-7-111, automatically raise their rates to recover their costs of paying all fees prescribed under this chapter.

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-7-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X came late		X
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

DATE MARCH 7, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
John Mc Naught	State Tax Appeal Board	HB-391	✓	
James A. Loftus	MT Fire Dist Assn	HB 182	✓	
James Balke	Gallatin Co Fire Council / Belgrade Rural Fire Dist	HB 182	✓	
Mark Langohr	West Helena Valley Fire	HB 182	✓	
Joe Steiner	City of Billings	SB 407		
Tom Leonard	West Helena Valley F.D.	HB 182	✓	

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Esther Bengtson, on March 12, 1991, at 3:16 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Gene Thayer (R)
Mignon Waterman (D)

Members Excused: none

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HB-295

Presentation and Opening Statement by Sponsor: Representative Steve Benedict, District 64, said this bill is a response to a simple problem. No county officers, other than the sheriffs, can leave the county for more than 15 days without the permission from the commissioners. It has been this way since 1947. Right now, the Clerk & Recorder in his county has to get permission to take a normal vacation, and this is out-of-date. This could lead to some political playing around, and this bill would take care of this. It would allow county officers to go on vacation without fear of losing their office. He did not say that would happen, but the possibility is there that a county commissioner with differences with an elected officers could make life

residents of Montana want the Legislators to do what the Legislature was charged to do, and that was to address the provisions of property and taxation reform as set forth in I-105. Do not continue the process of driving holes through I-105 by providing exemptions for this group, that group, etc. We want repeal in response to tax reform.

Senator Bengtson asked Mr. Morris if there is a bill that repeals I-105? Mr. Morris said that SB-463, yet to be introduced, proposes to repeal I-105.

Senator Gage joined the committee and Senator Bengtson asked him to explain his amendments (Exhibit #6). Senator Gage said these are calls from rural hospitals trying to survive. He has told some of them that they might have to be happy just to have an aid station. If they want a hospital then it should get on the tax roll, and be supported by taxes. Some have realized that this is the only way to survive is to put it on the tax roll. Currently there are only provisions for 3 mills to support a hospital district. They wanted to draft a bill, but it was too late. I told them that we might be able to amend one, and after talking with Greg Petesch he said that HB-625 could carry the amendments. If Senator Blaylock's local option tax passes these amendments would probably not be needed. But who knows what will happen to that bill.

Senator Beck asked Senator Gage if this was just another option? Senator Gage said that it was just adding to the flexibility of funding hospital districts.

Closing by Sponsor: Representative Nelson briefly stated that the first amendment that she proposed is necessary because it really does lay down the ground rules, but she is uncertain about Senator Gage's amendments. She will return when the committee takes Executive Action to answer any further questions.

EXECUTIVE ACTION ON SB-407

Discussion: Senator Waterman said this bill was amended on February 21, 1991 to take out subdivision business. We had other amendments proposed and they are included in today's amendments. (Exhibit #7). Senator Waterman explained her additional handout that lists the DHES proposed fee system and the Billings proposed cap on fees, and how both would affect the bottom line of paying

for the program. The graph demonstrates that information (Exhibit #8).

Amendments, Discussion, and Votes: C. Erickson explained the list of amendments. These are from the number of suggestions and proposals at the last committee meeting. They are combined and can be voted on separately, but the text editor would combine them later.

#1. is to correct an oversight. The original bill request was from the DHES and was not put on the bill.

#2-#5 amends the title.

#6. was requested by Senator Thayer and addresses arbitrary assessing of penalties. This provides that the DHES must adopt a progressive procedure for a water system with problems. DHES would set up a procedure and penalties would be the last resort. DHES had no problem with that, but they wanted a caveat put in. In a case that an immediate assessment be warranted where deliberate actions or contamination has occurred.

#7 amends the catch line on fees.

#8 is where specific language on the maximum and minimum fees would be addressed. DHES will address this today.

#9 was requested by Senator Kennedy from the Billings' proposal that the water systems not have to got to through the public hearing process to pass the cost of recovering the fees to their customers.

#10. talks about the appeal process. Public water systems can appeal. This requires that the DHES notify them in writing. Erroneous and excessive fees can be appealed, but if no part is appealed then the fees must be paid.

#11. is from the meeting of the DHES and the mining industry. This drops the administrative penalty from $1000 to $500.

#12. is the same as #11 in contested cases the provisions of the Montana Administrative Procedure Act will be applied.

#13. is a new section that relates to #9 that exempted the fee raise from the need for a public hearing, this put in a this fee into the exemption clause.

#14. strikes effective date at the request of the DHES because they felt they would not have the program up and ready to go by July 1.

Senator Waterman said she had understood that Joe Steiner of Billings had wanted amendment #9 to exempt the need for a hearing in front of the PSC, does this exempt them from that? C. Erickson said this was the wording of the amendment from Billings. The discussion this morning agreed with this.

Joe Steiner from Billings mentioned that in the meetings they

wanted the amendment to read "public water supplies including privately owned", so that Mountain Water and Butte Water would be specifically included. They think in the PSC has looked at these two systems somewhat differently than municipalties when applying their rules and regulations.

Senator Vaughn asked if that would include trailer courts? C. Erickson said that 69-7-111 relates only to municipalities, but not to anyone else.

Senator Beck asked C. Erickson if there is a separate section of code that addresses private water systems? C. Erickson said she was not aware of one. Senator Waterman asked how trailer courts raise their rates? Ray Wadsworth, Montana Rural Water, said that incorporated municipalities and private water systems, which includes trailer courts, do go to the PSC for approval. Water user associations and water districts however do not have to go to the PSC for approval of a rate change.

Senator Hammond asked for clarification of a non-community and a non-transient public water system that is referred to on the chart? Dan Frazer, Chief of the Water Quality Bureau answered Senator Hammond's question. A non-community system serves a transient population like a bar. A non-transient is were people do not live but frequent like schools and daycare centers.

Senator Waterman clarified to the committee that the fees listed in column 4, $/SC/YR Range, were figures for a year, so monthly fees on a bill would be 25 cents to 25 cents. Senator Harding pointed out that the small communities would have to pay the 75 cents.

Senator Waterman reiterated that the Governor's task force proposed this fee system. No one is in love with a fee system, but they all concluded a fee system is needed. A compromise would be a minimum fee of $150/public water system and a maximum of $25,000/public water system with a $1 to $19 charge for hookups.

Senator Beck asked what the logic is for the difference on the fee for hookup from large to small systems? Senator Waterman said she would not defend the fee system. If it were up to her, the monies would come from the General Fund. She said if the system was paid by fee for service then small systems could not afford it. It has been testified to and shown that large urban systems will always have to subsidize small rural systems.

Senator Hammond said he spoke for small systems, and they don't

want any regulation. Senator Harding added that Senator Nathe had mentioned that we can retain primacy without all this regulation. Senator Waterman said the DHES through the task force, outlined 6 options. They felt this bill was the best of the options. She agreed that Senator Harding was correct that the state can retain primacy, and do it in a variety of steps. She was made to understand that the strength of primacy and a state run program is that the state is helpful and the system is viable. We know the horror stories of subdivisions faced with rebuilding systems that were not in compliance when first put in. She believed large and small systems agreed at the hearing that they want the state to retain primacy and run a state program.

Senator Vaughn asked if these fees go for guidance and supervision, but no funds for upgrading? Senator Waterman said there will be a program of inspection, training, special studies, emergency response, etc. None of these things will be available if the EPA has primacy. They will track and enforce the EPA rules, period.

Senator Harding said everyone wants to retain primacy, but do we need all the regulations? Senator Waterman said in 1989 the EPA threatened the state of Montana's primacy because we were not doing a good job with the program we have. We are not funding it adequately, we're not doing the appropriate testing, and they plan to take primacy away from the state, and they will come in and enforce the regulations themselves. Because of these discussions, Governor Stephens appointed the task force to address this legislation. The six options were formed. Two options retain primacy, the one in this bill, and another with a minimum state program that would cost about $400,000 less.

Senator Thayer asked if DHES couldn't study this for 2 more years to deal with all the questions and problems presented with this bill? Dan Frazer said the Federal Government would take about 1 year to move to take primacy from the state, but it is hard to predict what the Feds will do. The Federal Government was involved in the Task Force and they agreed with us funding only 80%, and still be able to keep the federal grant monies. Right now, 75-80% of the federal dollars are spent mostly on the state laws and program rather than on the EPA regulations.

Senator Beck asked if they take primacy away can we take it back? Mr. Frazer said if you lose primacy then you lose the expertise and knowledge of the program. It would take ten years to redevelop a good system after taking back primacy.

Senator Waterman said the Appropriations Subcommittee heard this

bill. We put money in it, and unless you want General Fund dollars we can leave the fee system to the Rule Making. They will have public hearings to set those fees. They can only set fees that will raise enough money to cover the cost of the program. We can vote on the amendments and leave those that deal with fees out.

Senator Waterman moved all the amendments except #8.

Senator Beck said he was concerned about the fees. If we can save primacy for everyone in the state, then everyone in the state should pay the same amount. The money is going to the DHES, so the fees should be equal for everyone.

The vote on the motion to pass the amendments except #8 passed 8 to 1. Senator Hammond voted against, and the vote was recorded as a roll call vote.

Senator Bengtson still felt a minimum and maximum fee needed to be addressed in the bill.

Senator Hammond said no matter what the fees the bill does not put a limit on the cost of the program. There is no public hearing to set the DHES budget for these costs. He can not support any part of this bill.

Senator Waterman pointed out that small systems customers pay 75 cents/month/hookup and larger system customers pay 25 cents/month/hookup. Senator Beck said that 33 cents/month/hookup for people in Billings is not fair.

Senator Beck asked if anyone knew what the program would cost if the EPA took over? Can they bill the state back? Senator Eck said it will certainly cost the state because the federal grant money currently received is being spent on the state program, and that would be lost.

Senator Waterman said the state would have to pick up added costs for services that would be assumed by other state agencies, so there would be additional costs.

Senator Beck said he knew the committee wanted to act on this bill, but he could not pass it before discussing it with the EQC and others. Senator Beck moved to amend the bill to a $3/hookup maximum and $100/system minimum fee as the DHES had first proposed. The motion carried. C. Erickson asked for clarification of the requested amendments.

Senator Beck asked the committee to defer any other vote on SB-407 until he could investigate further. Senator Bengtson felt the committee was ready to move on this bill.

Senator Waterman moved Do Pass SB-407 as amended. The roll call vote was read. Senator Eck passed on the first round, and then voted against. The motion failed 3 to 6. Senators Harding, Kennedy and Vaughn voted for the Do Pass as amended.

Senator Thayer moved to table SB-407 as amended. The motion carried unanimously, and was recorded as a roll call vote.

EXECUTIVE ACTION ON HB-295

Motion: Senator Thayer moved to Concur in HB-295. The motion passed unanimously and was recorded as a roll call vote. Senator Bengtson will carry HB-295.

EXECUTIVE ACTION ON HB-296

Motion: Senator Thayer moved to Concur in HB-296. The motion passed unanimously, and was recorded as a roll call vote. Senator Bengtson will carry HB-296.

ADJOURNMENT

Adjournment At: 5:10 p.m.

Esther Bengtson
ESTHER BENGTSON, Chairman

Joyce Inchauspe-Corson
JOYCE INCHAUSPE-CORSON, Secretary

EB/jic

Amendments to Senate Bill No. 407
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson
March 8, 1991

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 7
DATE 3-12-91
BILL NO. SB-407

1. Page 1.
Following: line 2
Insert: "by request of the department of health and environmental sciences"

2. Title, line 18.
Following: ";"
Insert: "providing an opportunity for the appeal of the fee assessment; allowing a municipality to raise water rates to cover costs associated with fees without a public hearing;"

3. Title, line 23.
Following: ";"
Insert: "and"

4. Title, line 24.
Following: "SECTIONS"
Insert: "69-7-111"

5. Title, line 25.
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

6. Page 3, line 3.
Following: "."
Insert: "The legislature recognizes that an economic hardship may be imposed on a public water supply system in order for that system to be in compliance with state and federal public water supply laws and that this hardship may be further increased by the levying of administrative and civil penalties for noncompliance. It is the intention of the legislature that the department adopt rules that establish a procedure for the progressive enforcement of this act in which the levying of administrative and civil penalties is a final action. The department may adopt rules that allow for the bypass of the enforcement procedures and the immediate assessment of penalties if specific circumstances warrant this action."

7. Page 9, line 19.
Following: "fees"
Insert: "-- limitations -- opportunity for appeal"

8. Page 10, line 1.
Insert: LANGUAGE ON MINIMUM AND MAXIMUM FEES

9. Page 10.
Following: line 1
Insert: "(2) Public water supply systems may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111."
Renumber: subsequent subsections

10. Page 10.
Following: line 10
Insert: "(5)(a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the belief that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (5)(a).

11. Page 12, line 13.
Strike: "$1,000"
Insert: "$500"

12. Page 12.
Following: line 16
Insert: "(7) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, apply to any hearing before the board under this section or [section 4]."

13. Page 16.
Following: line 3
Insert: **"Section 11.** Section 69-7-111, MCA, is amended to read:
"69-7-111. Municipal rate hearing required -- notice. (1) ~~If~~ Except as provided in [section 4], if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper

as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

Renumber: subsequent section

14. Page 16.
Following: line 11
Strike: section 12 in its entirety

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 8
DATE 3-12-91
BILL NO. SB-407

TASK FORCE PROPOSAL

MINIMUM FEE SYSTEMS ($100/PWS)

Population	NO. PWS	No. S.C.	$/S.C./Yr Range	Total
< 50	205	3,376	$ 6.00 - 10.00 (75¢/mon)	$ 20,500
50 - 99	176	4,479	(50¢/mon) 3.00/yr 6.00/yr	17,600
Non-Community	1,165			116,500
Non-Transient	212			21,200
				$175,800

SYSTEMS CHARGED AT $3.00/S.C./YR

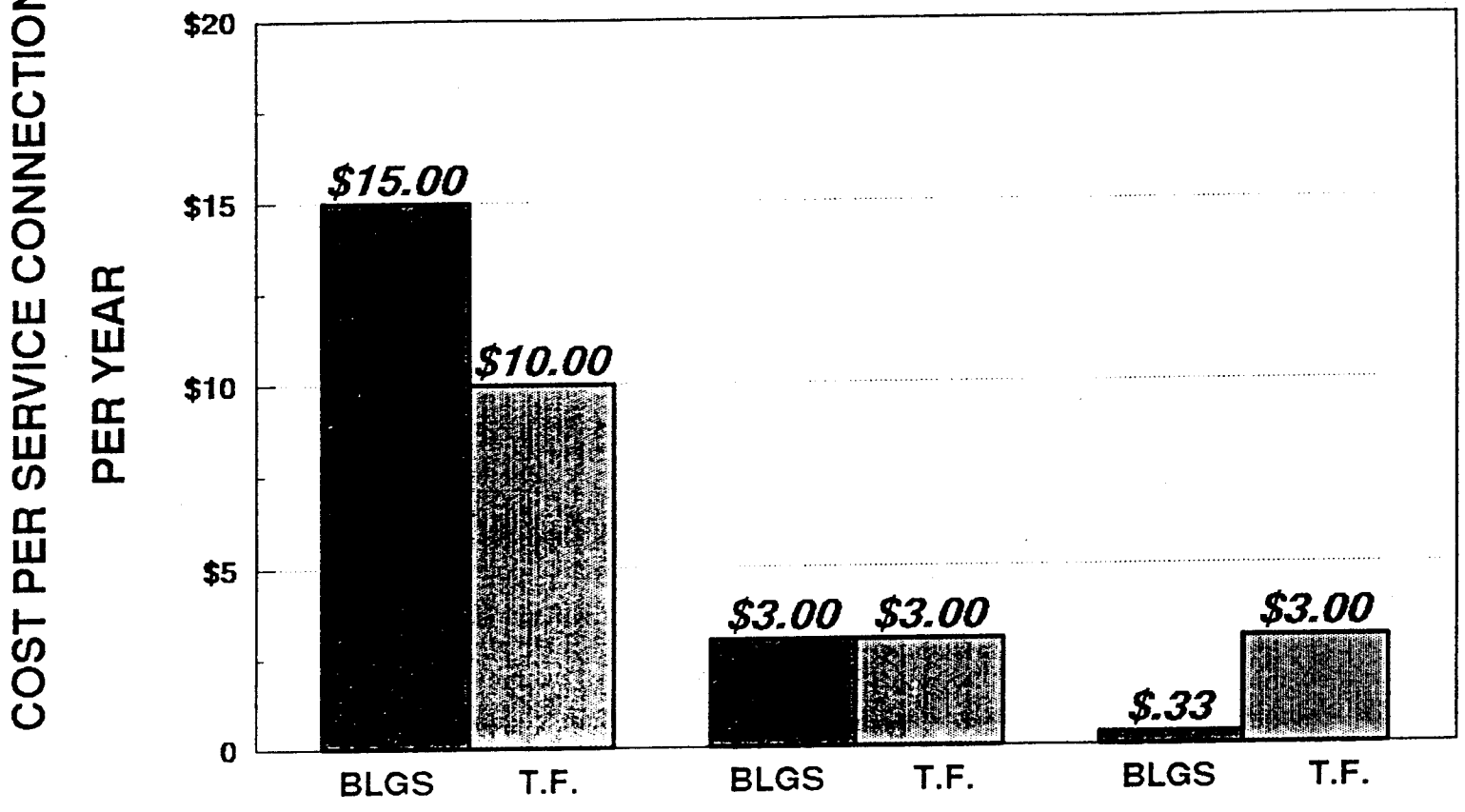
100 - 7499	324	69,726	3.00/yr (25¢/month)	209,178
7500 - 90000	11	96,175	3.00/yr	288,525
Total				$673,503

BILLINGS' PROPOSAL

MINIMUM FEE SYSTEMS ($150/PWS)

Population	NO. PWS	No. S.C.	$/S.C./Yr Range	Total
< 50	205	3,376	$ 9.00 - 15.00	$ 30,750
50 - 99	176	4,479	4.54 - 9.00	26,400
100 - 149	77		3.00 - 4.54	11,550
Non-Community	1,165			174,750
Non-Transient	212			31,800
				$275,250
SYSTEMS CHARGED AT $3.00/S.C./YR				
150 - 7499	247	66,848	3.00	200,544
SYSTEMS CHARGED AT $7,500				
> 7500	11		.33 - 3.00	82,500
Total				$558,294

COSTS BY SYSTEM SIZE



		SMALL	MEDIUM	LARGE
BLGS	Population	25 - 149	150 - 7,499	> 7,500
	Total Fee	$275,250	$200,544	$82,500
T.F.	Population	25 - 99	100 - 7,499	> 7,500
	Total Fee	$175,800	$209,178	$288,525

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-12-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer	X		
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-12-91 Bill No. SB 407 Time 5:05

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTSON		X
SENATOR ECK	X	
SENATOR HAMMOND		X
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER		X
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: motion to amend DHES
$100 min/public system + 6-3
$3/hookup

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-12-91 Bill No. SB-407 Time 5:03

NAME	YES	NO
SENATOR BECK		X
SENATOR BENGTSON		X
SENATOR ECK		X
SENATOR HAMMOND		X
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER		X
SENATOR VAUGHN	X	
SENATOR WATERMAN		X

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: Move to do Pass as Amended

Failed 3-6

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-12-91 Bill No. SB-407 Time 5:06

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTSON	X	
SENATOR ECK	X	
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: moved to table SB-407

DATE MARCH 12, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
DEBBIE SCHLESINGER	MT LIBRARY ASSOC	HB 602		X
Richard Miller	MT State Library Commission	HB 602		✓
Katharine Donnelley	MT Hosp Assn	HB625	✓	✓
JAMES A. LOFFTUS	MT FIRE DIST ASSN	H5296	X	
Dan Troy	Dept. of Health & Env. Sci	SB401	X	
Donna Jensen	Dept of Health & Env. Sci	SS407	X	
Gloria Hermanson	MT Cultural Advocacy	HB602		X
Gordon Morris	MACo	295 602 296 625	X	
Tod Stiever	City of Billings	SB407		
Dale Anderson	Jefferson Co / MACo	HB602	X	
Ray Wadsworth	Mont Rural Water	407	X	
Jay Pettengr	Teton Medical Center	625	X	
Steve Browning	MT Hosp Assn	625	X	

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Esther Bengtson, on March 14, 1991, at 3:40 p.m.

ROLL CALL

Members Present:

Esther Bengtson, Chairman (D)
Eleanor Vaughn, Vice Chairman (D)
Thomas Beck (R)
Dorothy Eck (D)
H.W. Hammond (R)
Ethel Harding (R)
John Jr. Kennedy (D)
Mignon Waterman (D)

Members Excused: Gene Thayer (R)

Staff Present: Connie Erickson (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HB-230

Presentation and Opening Statement by Sponsor: Representative Don Larson, District 65, said this bill will allow a fire district to establish capital improvement fund. This allows fire districts to do something they are not specifically authorized to do in the law. County Attorneys are legal counsel for many of these fire districts, and they have said they can not do this without having it specifically stated in the law. So this will clarify the law to allow establishment of a capital improvement fund. As you know, fire trucks are more expensive, and so capital improvements are a major budget item. We ask the committee to consider their ability to generate these capital improvement funds.

EXECUTIVE ACTION ON SB-407

Senator Harding moved to take SB-407 off the table. A roll call vote was taken, and the motion passed 8 to 1. Senator Hammond voted against the motion.

Amendments, Discussion, and Votes: Senator Harding said she whole-heartedly felt that we need state primacy, and Senator Waterman worked very hard on this and knew what she was talking about. Senator Harding she has not been against the bill, but the amount of money is the problem that troubled everyone. She is not in favor of regulations, but it is so much better to have it at the state level instead of the federal level. She offered an amendment to the amendment #8 to change the fees to $2/hookup instead of $3/hookup (Exhibit #4). 4). She said the amount of money is more than is actually needed, and this amendment cuts that amount.

C. Erickson went over the previously adopted amendments to SB-407 (Exhibit #5). She then explained where Senator Harding's amendment would apply. There is no upper level cap.

Senator Harding said if there are just 6 or 7 water users they have to pay $100? C. Erickson said if the system meets the criteria of a public water system, but this amount is too small.

Senator Beck asked if the adopted amendments were all the ones proposed? He thought he didn't move the fees? C. Erickson said the "adopted" amendments sheet is a merged copy of all amendments to date on SB-407. The fees were adopted the day the bill was tabled, and so she put them into #8 were previous amendments simply stated "language about fees".

Senator Bengtson asked what Senator Harding's amendment would generate in fees? Senator Beck said it would be about 1/3 less. Senator Waterman asked if Senator Harding had a proposal to make up the 1/3 loss? Senator Harding said since she has been on Long Range Building with all these people wanting help with their water quality that this needs to come from the R.I.T. funds. That is what they are there for. The only bad thing, the R.I.T. funds have been approved for this year, so the funds would not be available this biennium. Senator Waterman said the Task Force considered all sorts of funding including the R.I.T. funds. They knew they could not use the R.I.T. funds this biennium. So this amendment would reduce the program by 1/3 or making up the 1/3 from the General fund. Senator Harding said she did not understand why the R.I.T. funds were not considered? Senator

Waterman said they did, but they chose fees instead.

Dan Frazer, DHES, said the task force felt that all available funding including R.I.T. and General Fund, but they felt they were spoken for. They felt this was a public health program that has been around since 1907, and needed to be kept. Nobody liked the idea of funding with fees. They felt this was the only option.

Senator Hammond said that the R.I.T. funds are the ones that are helping improve water systems now, and they shouldn't be used for a regulation program. Senator Bengtson said the program should be downscaled.

Senator Beck asked what the DHES could do with $2/hookup? Dan Frazer said they could live with it. They do not know how collectible these fees will be. The $3/hookup was the maximum, and he felt that the program would cost over $2 based on 1989 dollars, so that is why they set the maximum at $3. The bigger systems will still pay the biggest portion of the funding. If you limit it to $2 we will still retain primacy, but they will probably not be able to implement the same kind of program that the task force recommended. We would be within the ball park.

Senator Bengtson asked Joe Steiner from Billings to respond to this change in fees? Mr. Steiner said their position on the bill was in the absence of a fee to present "a reasonable fee based on actual services provided". The $2/hookup is not what we consider a reasonable amount. This will be up to the DHES to set the actual fee after the bill has passed. Senator Bengtson asked if opponents still had room to negotiate? Mr. Steiner said in the public hearing process they could.

Senator Waterman said she appreciated the work the committee has done on this, and the DHES willingness to compromise on the fees. She is concerned that the DHES has said that they will try to hold the fee down, and may not use the whole $3. The hearing process will allow changes in the structure of the fee if it is brought out to be appropriate. She is concerned that the ultimate effect could be that we would be back to option #2, and what the cutbacks are on are the very things that she likes about the state program like operator certification, assessments, training, and working with small systems to provide expertise. Quite frankly, it is great for Helena or Billings because we do not have to worry because our systems have the expertise. They have a staff in Billings that can handle this, but she is concerned about the small rural communities that don't have staff on board. They rely on the DHES, and this staff that helps the

small rurals will be cut. So selfishly she could do this and save her taxpayers some money, but she is concerned about the small areas, and so she will oppose this amendment to the amendment.

Senator Bengtson said that there is a lot of expertise in these small rural systems. They know how to do it, they just need the money to do it. She called on Ray Wadsworth, Montana Rural Water Users Association, to expand on this. Mr. Wadsworth said the expertise provided by the DHES is different than the expertise in the field. DHES handles new development, and all the planning involved in those. We support primacy. Our people did not have time to vote on the fees, but we do not want to lose primacy, so we will go along with the fees. The DHES needs additional money to monitor what the EPA has said they need to monitor.

Senator Beck said the DHES said the $3/hookup was a maximum, and he suggested to Senator Waterman that the $2/hookup will make the bill fly, and so she should support it.

The question on the motion to amend the amendment from $3/hookup down to $2/hookup was called for. The motion was recorded as a roll call vote. It passed 6 to 3. Senators Eck, Thayer, and Waterman voted against.

Motion: Senator Harding moved to Do Pass SB-407 as amended. The motion carried 7 to 2, and was recorded as a roll call vote. Senators Thayer and Hammond voted against.

ADJOURNMENT

Adjournment At: 5:30 p.m.

Esther Bengtson
ESTHER BENGTSON, Chairman

Joyce Inchauspe-Corson
JOYCE INCHAUSPE-CORSON, Secretary

EB/jic

LG031491.SM1

NOTICE OF COMMITTEE EXECUTIVE ACTION

(Do not use for actions resulting in report to floor).

To: Secretary of the Senate

Dated this 14 day of MARCH, 1991.

Committee: SENATE LOCAL GOVERNMENT

Bill: SB-407

Action: MOTION TO TAKE SB-407 OFF THE TABLE

Esther G Bengtson

Signature

SB 3/15 11:15

Amend Senate Committee on Local Government amendment dated March 8, 1991, as follows:

Amendment No. 8
In Insert, following: "is"
Strike: "$3"
Insert: "no more than $2"

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 4
DATE 3-14-91
BILL NO. SB-407

Adopted

Amendments to Senate Bill No. 407
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson
March 8, 1991

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 5
DATE 3-14-91
BILL NO. SB-407

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"

2. Title, line 18.
Following: ";"
Insert: "PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING;"

3. Title, line 23.
Following: ";"
Insert: "and"

4. Title, line 24.
Following: "SECTIONS"
Insert: "69-7-111,"

5. Title, line 25.
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

6. Page 3.
Following: line 3
Insert: "The legislature recognizes that an economic hardship may be imposed on a public water supply system in order for that system to be brought into compliance with state and federal public water supply laws and that this hardship may be further increased by the levying of administrative and civil penalties for noncompliance. It is the intention of the legislature that the department adopt rules that establish a procedure for the progressive enforcement of this act in which the levying of administrative and civil penalties is a final action. The department may adopt rules that allow for the bypass of the enforcement procedures and the immediate assessment of penalties if specific circumstances warrant this action."

7. Page 9, line 19.
Following: "fees"
Insert: "-- opportunity for appeal"

8. Page 9, line 24.
Strike: "must be based on the number of connections"
Insert: "is $3 for each service connection"

9. Page 10.
Following: line 1
Insert: "(2) Public or private water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111."
Renumber: subsequent subsections

10. Page 10.
Following: line 10
Insert: "(5)(a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

11. Page 12, line 13.
Strike: "$1,000"
Insert: "$500"

12. Page 12.
Following: line 16
Insert: "(7) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under [section 4] or this section."

13. Page 16.
Following: line 3
Insert: "**Section 11.** Section 69-7-111, MCA, is amended to read:
"69-7-111. Municipal rate hearing required -- notice. (1) ~~If~~ Except as provided in [section 4], if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a

time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

Renumber: subsequent section

14. Page 16.
Following: line 11
Strike: section 12 in its entirety

Amendments to Senate Bill No. 407
First Reading Copy

For the Committee on Local Government

Prepared by Connie Erickson
March 18, 1991

SENATE LOCAL GOVT. COMM.
EXHIBIT NO. 5a
DATE 3-14-91
BILL NO. SB-407

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"

2. Title, line 18.
Following: ";"
Insert: "PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING;"

3. Title, lines 21 through 23.
Strike: "ESTABLISHING" on line 21 through ";" on line 23
Insert: "AND"

4. Title, line 24.
Following: "SECTIONS"
Insert: "69-7-111,"

5. Title, line 25.
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

6. Statement of intent, page 2, line 14.
Following: "."
Insert: "It is the intent of the legislature that the rules establish a reasonable fee schedule that approximates the department's actual and necessary costs."

7. Page 3.
Following: line 3
Insert: "The legislature recognizes that an economic hardship may be imposed on a public water supply system in order for that system to be brought into compliance with state and federal public water supply laws and that this hardship may be further increased by the levying of administrative and civil penalties for noncompliance. It is the intention of the legislature that the department adopt rules that establish a procedure for the progressive enforcement of this act in

which the levying of administrative and civil penalties is a final action. The department may adopt rules that allow for the bypass of the enforcement procedures and the immediate assessment of penalties if specific circumstances warrant this action."

8. Page 9, line 19.
Following: "fees"
Insert: "-- opportunity for appeal"

9. Page 9, line 24.
Strike: "must be based on the number of connections"
Insert: "is no more than $2 for each service connection"

10. Page 10.
Following: line 1
Insert: "(2) Public or private water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111."
Renumber: subsequent subsections

11. Page 10.
Following: line 10
Insert: "(5)(a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

12. Page 12, line 13.
Strike: "$1,000"
Insert: "$500"

13. Page 12.
Following: line 16
Insert: "(7) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under [section 4] or this section."

14. Page 14, lines 7 and 8.
Strike: "sanitation" on line 7 through "[section 10]" on line 8
Insert: "state general fund"

15. Page 14, lines 21 and 22.
Strike: "sanitation" on line 21 through "[section 10]" on line 22
Insert: "state general fund"

16. Page 15, lines 17 and 18.
Strike: "and" on line 17 through "[section 10]" on line 18

17. Page 15, line 19 through page 16, line 3.
Strike: section 10 in its entirety
Renumber: subsequent sections

18. Page 16.
Following: line 3
Insert: **"Section 11.** Section 69-7-111, MCA, is amended to read:
"69-7-111. Municipal rate hearing required -- notice. (1) ~~If~~ Except as provided in [section 4], if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.
(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.
(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.
(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.
(4) The published notice must contain:
(a) the date, time, and place of the hearing;
(b) a brief statement of the proposed action; and
(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.
(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."
Renumber: subsequent sections

19. Page 16, line 4.
Strike: "(1)"

20. Page 16, line 9.
Strike: subsection (2) in its entirety

21. Page 16.
Following: line 11
Strike: section 12 in its entirety

TASK FORCE PROPOSAL

MINIMUM FEE SYSTEMS ($100/PWS)

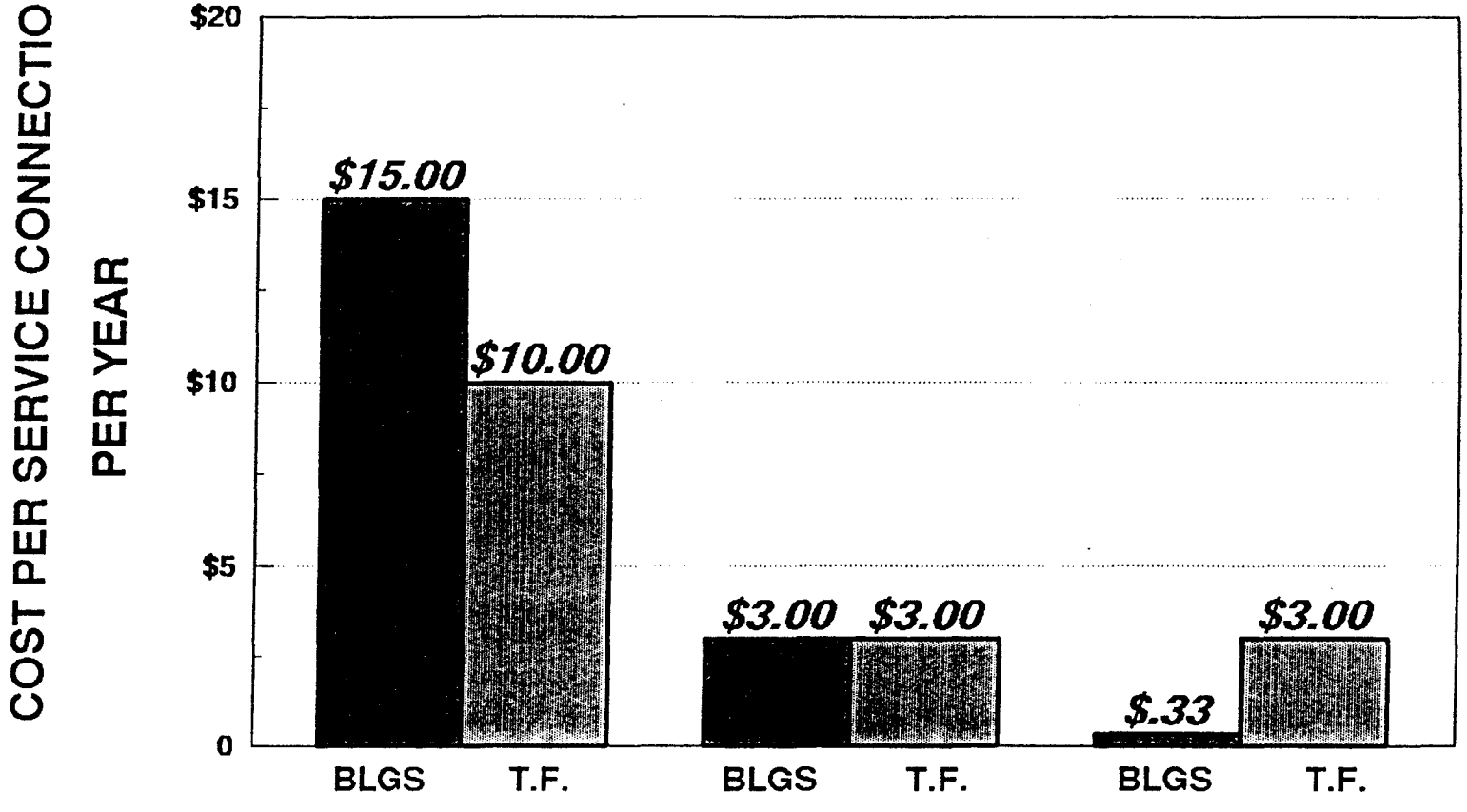
Population	NO. PWS	No. S.C.	$/S.C./Yr Range	Total
< 50	205	3,376	$ 6.00 - 10.00	$ 20,500
50 - 99	176	4,479	3.00 - 6.00	17,600
Non-Community	1,165			116,500
Non-Transient	212			21,200
				$175,800
SYSTEMS CHARGED AT $3.00/S.C./YR				
100 - 7499	324	69,726	3.00	209,178
7500 - 90000	11	96,175	3.00	288,525
Total				$673,503

BILLINGS' PROPOSAL

MINIMUM FEE SYSTEMS ($150/PWS)

Population	NO. PWS	No. S.C.	$/S.C./Yr Range	Total
< 50	205	3,376	$ 9.00 - 15.00	$ 30,750
50 - 99	176	4,479	4.54 - 9.00	26,400
100 - 149	77		3.00 - 4.54	11,550
Non-Community	1,165			174,750
Non-Transient	212			31,800
				$275,250
SYSTEMS CHARGED AT $3.00/S.C./YR				
150 - 7499	247	66,848	3.00	200,544
SYSTEMS CHARGED AT $7,500				
> 7500	11		.33 - 3.00	82,500
Total				$558,294

COSTS BY SYSTEM SIZE



		SMALL	MEDIUM	LARGE
BLGS	Population	25 - 149	150 - 7,499	> 7,500
	Total Fee	$275,250	$200,544	$82,500
T.F.	Population	25 - 99	100 - 7,499	> 7,500
	Total Fee	$175,800	$209,178	$288,525

ROLL CALL

SENATE LOCAL GOVERNMENT COMMITTEE

DATE 3-14-91

52 LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Beck	X		
Senator Bengtson	X		
Senator Eck	X		
Senator Hammond	X		
Senator Harding	X		
Senator Kennedy	X		
Senator Thayer			X
Senator Vaughn	X		
Senator Waterman	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-14-91 Bill No. SB-407 Time 5:10

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTSON	X	
SENATOR ECK	X	
SENATOR HAMMOND		X
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER	X	
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: move to take SB-407 as amended off the table

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date _____ Bill No. SB-407 Time 5:29

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTSON	X	
SENATOR ECK		X
SENATOR HAMMOND	X	
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER		X
SENATOR VAUGHN	X	
SENATOR WATERMAN		X

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: move to amend #8 to read "not more than $2

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 3-14-91 Bill No. SB407 Time 5:30

NAME	YES	NO
SENATOR BECK	X	
SENATOR BENGTSON	X	
SENATOR ECK	X	
SENATOR HAMMOND		X
SENATOR HARDING	X	
SENATOR KENNEDY	X	
SENATOR THAYER		X
SENATOR VAUGHN	X	
SENATOR WATERMAN	X	

JOYCE INCHAUSPE-CORSON
Secretary

ESTHER BENGTSON
Chairman

Motion: moved to Do Pass on SB-407 as amended.

DATE MARCH 14, 1991

COMMITTEE ON SENATE LOCAL GOVERNMENT

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
JAY PRINTZ	MT. Sheriffs & Peace Officers Assoc.	HB 791	X	
Henry E Lohr.	MT St. Vol Firefighters Assn	HB-230	X	
Roy Cornell	Beaverhead Fire Dist.	HB230	X	
Debbie Schlesinger	MT. LIBRARY ASSOC.	HB602		
[illegible]	DHES	SB407	X	
Richard Miller	MT State Library Comm.	HB602		
Dona Jensen	MT Water Quality Div.	SB407	X	
Lyle Nagel	Mt. St. Vol Firefighters Assn Mt. St. Fire Chiefs Assn	HB230	X X	
JAMES A. LOFTUS	MT FIRE DIST ASSC	HB230	X	
Bruce Sherman	Mt La Rural Fire Dist	HB230		
Gordon Morris	MACo	230, 706 791	✓	
Howard W. Hyde	Flathead Co Commissioner	230, 706 791	✓	
Joan Hamilton	Mt. Sheriffs & Peace Offs	791	✓	
Ray Wehrenmeister	MT Rural Water	407	✓	
JOE STEINER	CITY OF BILLINGS	407		—

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill No. 407 (first reading copy - white), respectfully report that Senate Bill No. 407 be amended and as so amended do pass:

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"

2. Title, line 18.
Following: ";"
Insert: "PROVIDING FOR APPEAL OF THE FEE ASSESSMENT, ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING;"

3. Title, lines 21 through 23.
Strike: "ESTABLISHING" on line 21 through ";" on line 23
Insert: "AND"

4. Title, line 24.
Following: "SECTIONS"
Insert: "69-7-111,"

5. Title, line 25.
Strike: "; AND PROVIDING AN EFFECTIVE DATE"

6. Statement of intent, page 2, line 14.
Following: "."
Insert: "It is the intent of the legislature that the rules establish a reasonable fee schedule that approximates the department's actual and necessary costs."

7. Page 3.
Following: line 3
Insert: "The legislature recognizes that an economic hardship may be imposed on a public water supply system in order for that system to be brought into compliance with state and federal public water supply laws and that this hardship may be further increased by the levying of administrative and civil penalties for noncompliance. It is the intention of the legislature that the department adopt rules that establish a

procedure for the progressive enforcement of this act in which the levying of administrative and civil penalties is a final action. The department may adopt rules that allow for the bypass of the enforcement procedures and the immediate assessment of penalties if specific circumstances warrant this action."

8. Page 9, line 19.
Following: "fees"
Insert: "and opportunity for appeal"

9. Page 9, line 24.
Strike: "must be based on the number of connections"
Insert: "is no more than $2 for each service connection"

10. Page 10.
Following: line 1
Insert: "(2) Public or private water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111."
Renumber: subsequent subsections

11. Page 10.
Following: line 10
Insert: "(5)(a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice provided for in subsection (5)(a)."

12. Page 12, line 13.
Strike: "$1,000"
Insert: "$500"

(4) The published notice must contain:
(a) the date, time, and place of the hearing;
(b) a brief statement of the proposed action; and
(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.
(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."
Renumber: subsequent sections

19. Page 16, line 4.
Strike: "(1)"

20. Page 16, line 9.
Strike: subsection (2) in its entirety

21. Page 16.
Following: line 11
Strike: section 12 in its entirety

Signed: Esther G. Bengtson
Esther G. Bengtson, Chairman

3-19-91
Amd. Coord.

3-18-91
Sec. of Senate

CHAIRMAN--BOB RANEY
NORMAL SCHEDULE==> SITE: ROOM 317 DAYS: TU,TH TIME: 3:00 P.M.

SECRETARY-LISA FAIRMAN

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0377	3/04	3/22		CONCUR		4/02
JERGESON, GREG			EXEMPT CERTAIN UNDERGROUND STORAGE TANK INSTALLERS FROM CIVIL PENALTIES			
SB0386	3/04	3/21		CONCUR		4/02
BENGTSON, ESTHER			WATER RIGHTS TRANSFER			
SB0400	3/04	3/19		CONCUR AS AMENDED		3/20
VAN VALKENBURG, FRED			ABSOLUTE LIABILITY SOLID WASTE DISPOSAL			
SB0402	3/04	3/12		CONCUR AS AMENDED		3/13
YELLOWTAIL JR., BILL			REQUIRES NW POWER PLANNING COUNCIL TO HOLD PUBLIC HEARING IN AFFECTED AREAS			
SB0407	3/21	4/01		CONCUR AS AMENDED		4/11
WATERMAN, MIGNON			CLARIFY THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"			
SB0425	3/04	3/21		CONCUR AS AMENDED		3/23
GROSFIELD, LORENTS			EXTEND THE PERIOD OF INITIAL WATER LEASES			
SB0426	3/04	3/21		TABLED ON 04/02		
GROSFIELD, LORENTS			WILDERNESS WATER RIGHTS			
SB0434	3/04	3/22		CONCUR AS AMENDED		4/02
BECK, TOM			UPPER CLARK FORK BASIN CLOSURE			
SB0455	3/04	3/12		TABLED ON 03/12		
THAYER, GENE			FIRST RIGHT OF PURCHASE OR RENEWAL OF LEASED RIGHT-OF-WAY			
SB0472	4/19	4/22		CONCUR AS AMENDED		4/23
MAZUREK, JOE			MONTANA-NORTHERN CHEYENNE WATER COMPACT			
SJ0006	2/01	2/11		CONCUR	APPROPRIATIONS	3/13
SWIFT, BERNIE			CONTINUING MONTANA'S MEMBERSHIP IN W. STATES LEGISLATIVE FORESTRY TASK FORCE			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BOB RANEY**, on April 1, 1991, at 3 p.m.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Ben Cohen (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Members Excused: Ed Dolezal (D)
Vivian Brooke (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HJR 42

Presentation and Opening Statement by Sponsor:

REP. MARK O'KEEFE, HD 45 - Helena, said his real concern is the use of Montana water for coal slurries prior to the adjudication process being completed. The resolution clearly states that, until the adjudication process is completed, Montana is adamantly opposed to use of water in this way.

Proponents' Testimony:

Jo Brunner, Montana Water Resource Association, supported HJR 42.

Opponents' Testimony: none

Questions from Committee Members:

REP. KNOX asked how much water is affected. **REP. O'KEEFE** said he has no minimum or maximum amount, but historically, coal slurry pipelines have proposed major appropriations of water, which will come from the Tongue River or the Powder River, where there is not much unappropriated water. A problem results if the federal government uses eminent domain to condemn the water. The agricultural base would be lost.

REP. FOSTER asked what the time frame would be. **REP. O'KEEFE** said the time frame given by the water court changes all the time. Judge Lesley was convinced it would be done before he died, and that did not happen. He guessed it would be a decade from completion.

Closing by Sponsor: **REP. O'KEEFE** closed.

HEARING ON SB 407

Presentation and Opening by Sponsor:

SEN. MIGNON WATERMAN, SD 22, Helena, said SB 407 was introduced at the request of the Department of Health and Environmental Sciences (DHES). It addresses important aspects of Montana's public water supply systems, using recommendations of the Public Water Supply Task Force. Task force members include representatives of approximately 30 different organizations and agencies that deal with public water supply issues.

The act will allow Montana to retain primacy over public drinking systems. Primacy means state regulations are the same or similar to federal Environmental Protection Agency (EPA) regulations. EPA will provide partial funding and allow the state to regulate both the federal and state standards.

In 1986, Congress amended the Safe Drinking Water Act and increased regulation of possible contaminants. Last year EPA notified Montana that it would lose primacy if additional staff and funding were not provided. The task force met four times and considered options ranging from retaining primacy and continuing a full program to giving up primacy and eliminating most of the state's duties.

The task force found that because of staff shortages and a multitude of non-primacy duties, the Department had not been able to comply with monitoring required by EPA. Random sampling of some Montana water systems turned up such contaminants as benzine, radon, lead and others.

The program proposed in SB 407 would provide training and technical assistance, prevention operations, timely review of

plans and specifications, enforcement of regulations and investigations of contamination. The task force considered several options for funding, and determined that a fee assessed against each service system on a public water supply system was the most equitable way to generate the necessary funds. Fees have been capped at $2 per year or approximately 17 cents per month.

There are two controversial aspects of the bill. One is whether to meet EPA standards. Someone is going to enforce them in Montana. The task force felt it would rather deal with officials in Helena than EPA in Denver. The second issue is funding. Task force members did not unanimously support funding by fees. The administration and department heads determined fees would be the most equitable way of funding. **EXHIBIT 1, 1A and 1B**

Proponents' Testimony:

Ray Wadsworth, Executive Director of Montana Rural Water Systems, supported SB 407. **EXHIBIT 2**

Dan Frazer, DHES Water Quality Bureau Chief, supported SB 407. **EXHIBIT 3**

Pete Frazier, Director of Environmental Health for the City-County Health Department in Great Falls, distributed written testimony and urged the committee to support SB 407. **EXHIBIT 4**

Richard Nisbet, Director of Public Works for the City of Helena and National Director for the Montana Section of the American Water Works Association, supported SB 407. **EXHIBIT 5**

Ted Doney, Mountain Water Company, said Mountain Water Company is a privately owned company that owns the water system in Missoula. The company supports SB 407 for reasons previously stated. An amendment is being offered for the bottom of Page 10 and top of Page 11. **EXHIBIT 6**

Publicly owned water supply systems have to get rate increase approval from the Public Service Commission (PSC) to recover costs of the fee assessed under the bill. The private exemption was stricken because of incorrect references to statutes. These amendments would allow the PSC to quickly approve any rate increase required by a privately owned water system to recover costs associated with the fee.

Opponents' Testimony:

Bruce McCandless, City of Billings, opposed SB 407. **EXHIBIT 7**

Questions from Committee Members:

REP. FAGG said the point of funding state government and getting no apparent benefit was valid. He asked DHES to address the issue. **Mr. Frazer** said the task force discussed it. There are

2,400 water systems in the state, all regulated and controlled by this program. It is to everyone's advantage that water meets standards.

REP. FAGG said it sounds like Billings will not benefit. **Mr. Frazer** said there will be very little benefit in terms of technical assistance to Billings' water plant or staff because the assistance is not needed.

REP. FAGG asked why Billings isn't exempted. **Mr. Frazer** said the task force felt this was the only legitimate way to fund the program, other than with General Fund money, because of the makeup of Montana's public water systems. More than 50 percent of the systems serve fewer than 100 people. The entire population receives the benefit.

REP. WANZENRIED asked about the number of FTEs in the fiscal note. **SEN. WATERMAN** said the present staff is 12.5 FTEs and will increase to 19.75 FTEs at the end of two years.

REP. TOOLE asked for background about the federal drinking water law that mandates this at the state level. **Mr. Frazer** said the original Safe Drinking Water Act was passed in 1974 and Montana got primacy for the program in 1978. EPA wrote interim primary standards. For Montana to get primacy, the state had to adopt standards that were at least as stringent as the federal standards.

Congress' intent was for EPA to regulate any contaminant that might be found in drinking water and would be likely to impact public health. EPA was slow to act, so in 1986, when the Safe Drinking Act was reauthorized and amended, it was made very restrictive. The workload for the state and public water systems increased dramatically.

REP. TOOLE asked what would happen if Montana lost primacy. **Mr. Frazer** said that when EPA runs a drinking water program like the ones in Wyoming and Indiana, the emphasis is on water-system monitoring to ensure water quality is monitored. Failure to monitor water results in enforcement action. Since the turn of the century, Montana has been involved in preventive actions to avoid, rather than react to, public health problems. If primacy were lost, operator certification, training, technical assistance, engineering plan reviews, and inspections would be lost.

REP. HOFFMAN asked if the impact to the General Fund would be $30,000 with the amendment. **SEN. WATERMAN** said she believed that was correct.

REP. HOFFMAN said that reflects a drop in the fee from $3 to $2. He asked where the $10,000 assumed penalties would go. **Jim Melstad, DHES,** said that the only General Fund expenditure with the bill would be existing General Fund money provided to the

subdivision program. There would be no proposed General Fund expenditures as part of this bill. The fiscal note assumes 1 FTE would be required, at a grade 9, step 2, for processing and collecting fees on 2,100 public water supply systems. That is the bulk of the cost.

REP. HOFFMAN said the fees would absorb any additional cost for the FTE. He asked about the $10,000 assumption of penalties and fines. **Mr. Melstad** said the $10,000 fees would be deposited in the public water supply special revenue account, not related to subdivisions. The fines would be assessed as civil penalties for non-compliance with existing federal and state regulations. The special revenue account would be used to run the public water supply program.

Closing by Sponsor:

SEN. WATERMAN said the amendment was considered in the Senate. Private-public water systems were excluded because the PSC was concerned about removing private companies from PSC review. Public water systems are excluded from the local public hearing process and can pass on the fee. Private-public waters systems, however, are entirely regulated by the PSC. There are concerns about EPA regulations and the fees, but this is an important bill that addresses a number of needs. The bottom line is safe drinking water in Montana.

HEARING ON HJR 43

Presentation and Opening Statement by Sponsor:

REP. MARY ELLEN CONNELLY, HD 8 - Kalispell, said HJR 43 asks the Department of State Lands (DSL) to do a sustained yield study on state lands. DSL supports the resolution and has the expertise to do it. In addition to government and industry forest land, there are 3 million acres of private forest land that needs to be included in sustained yield programs.

Proponents' Testimony:

Don Allen, Montana Wood Products Association, supported HJR 43. He said it is proper for DSL to look at the entire management of lands, not just sustained yield.

Janet Ellis, Montana Audubon Legislative Fund, supported the study. She said the study should deal with one more thing. She offered an amendment for Page 2, after Line 16, "(e) maintenance and enhancement of the physical and biological productivity of the land." The resolution does not address the fact that timber is not just forest. There are many aspects to the ecosystem.

Opponents' Testimony: none

Questions from Committee Members:

WHY DID THE PUBLIC WATER SUPPLY TASK FORCE DETERMINE IT WAS IN THE BEST INTEREST OF THE STATE TO RETAIN PRIMACY?

EXHIBIT 1
DATE 4-1-91
HB SB 407

A. Public Health Need:

- o Acute health problems:

  Documented waterborne disease outbreaks at White Sulphur Springs, Red Lodge, Big Sky & Missoula.

  Suspected outbreaks at Choteau, Helena, Butte, Bozeman, Whitefish & Glendive

  -These systems are in the top 2-3 % of Montana's PWS's- the "cream of the crop"

  -no epidemiological work being performed - >50% of our groundwater systems are very vulnerable to contamination - many surface water treatment plants are doing a poor job - many surface water sources have not treatment other than chlorination -

- o Chronic health problems:

  -Contamination events involving cancer-causing organic chemicals at Missoula Valley, Helena Valley, Gallatin Valley, Cascade, Lockwood Water Users Assn.

  -Very few systems have sampled for organic contaminants and many of our systems are vulnerable to this kind of contamination.

- o Compliance problems:

  -More than 50% of Montana's community systems have compliance problems - most of these problems are not particularly significant and can generally be handled by technical assistance and training rather than enforcement.

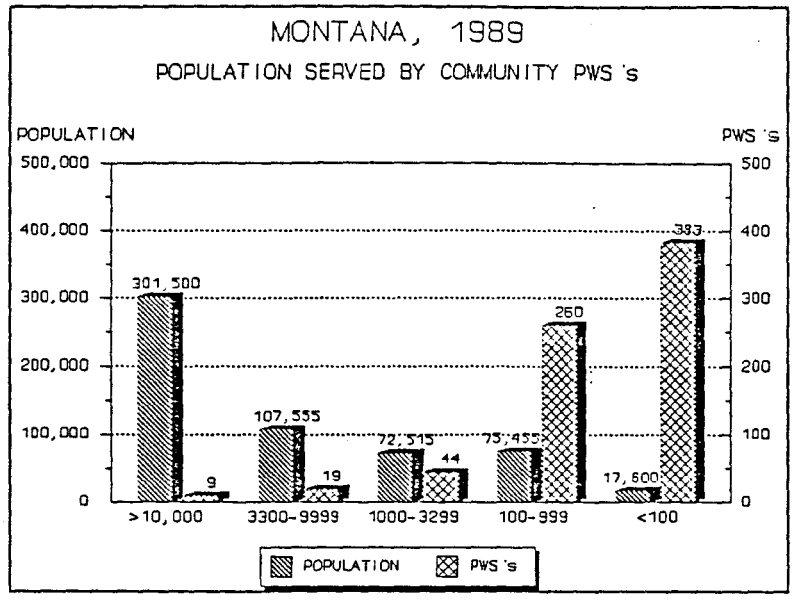
B. What are the tools government has to address the problems? * see note below.

o Inspections and sanitary surveys o Construction standards and engineering reveiw o Operator and administrator training o Technical assistance to PWS's o Emergency response o Public education o Technical assistance to owners of private wells o Special studies	**Preventive (State)**
o *Tracking compliance with the regulations* o *Enforcement*	Reactive (State and Federal)

* All of these tools are used by the state program. If EPA were to take over they would limit their activities to those two in bold.

C. What activities best fit the needs of Montana PWS's?

- o 90% of Montana systems serve < 1,000 persons
- o 54% of Montana systems serve < 100 persons



Because of the large number of very small systems in Montana, the task force felt the preventive activities would be more effective and more appropriate than enforcement.

D. Financial considerations of primacy:

OPTIONS	TOTAL COST	STATE COST
1. Option 1, full state + primacy	$2.96 million	$1.48 million
2. Option 2, minimal state + primacy	$2.15 "	$1.08 "
3. Option 3, full state program; no primacy	$1.51 "	$1.51 "
4. Option 4, training & technical assistance only	$0.9 "	$0.9 "
5. Option 5, no state PWS program; no primacy	$0.55 "	$0.55 "
6. Option 6, No PWS program No Subdivision Program No Operator Cert. "	-0-	-0-

1A pg 1 of 6
4-1-91
SB 407

REPORT TO DHES, GOVERNOR STEPHENS, AND THE 1991 LEGISLATURE BY MONTANA'S PUBLIC WATER SUPPLY TASK FORCE

I. INTRODUCTION

Among the many uses of groundwater and surface water in Montana, the most important is for drinking water. All Montanans have a right to an adequate supply of water that is safe to drink.

Montana has had a Public Water Supply Program since 1907 when outbreaks of waterborne disease and associated deaths moved its legislature to pass the first law regulating public water supplies. Federal regulation of water supplies did not begin until 1974 when Congress passed the Safe Drinking Water Act (SDWA). The SDWA was implemented in 1977 when the Environmental Protection Agency (EPA) promulgated the National Interim Primary Drinking Water Regulations. That same year the DHES was granted primary enforcement authority (primacy) for the federal program. Primacy was desirable because it brought oversight and enforcement of the federal regulations to a state agency. This agency is more accessible and responsive to Montana problems than a federal authority could be. Montana's primacy program is supported by both state and federal dollars.

The Department of Health and Environmental Sciences (DHES) is responsible for administering the Public Water Supply Program in Montana. This program's goal is to assure that water from public systems is bacteriologically, radiologically, and chemically safe to drink. Today this program faces serious new challenges as more toxic contaminants and disease-causing organisms are being found in consumers' water supplies. Accordingly, public concern about the safety of drinking water has grown. In 1986 Congress responded to this public concern with the 1986 amendments to the Safe Drinking Water Act (see Appendix I). These amendments mandate the following:

1. Disinfection of all public systems.
2. Filtration of all surface water systems.
3. Substantial increases in the monitoring of drinking water quality.
4. Establishment of drinking water standards for 83 contaminants by 1992 and nearly 200 contaminants by the year 2000.
5. Establishment of a state wellhead protection program.

Senate Bill 407
Primacy for Drinking Water Program

MRWS Copy -
EXHIBIT 2
DATE 4-1-91
HB SB 407

Montana Rural Water Systems; a private non-profit Training and Technical Assistance organization, is not a proponent of regulations but we are genuinely concerned about the health of our citizenry and the purity of water they are served for drinking. With a membership representing the majority of community type drinking water systems in Montana, we have become their representative at both the State and National level. As such, we are obligated to enumerate their wishes.

Montana has historically been a leader in new developments of the drinking water industry. Because of emphasis by the State on seemingly more important issues over the past several years, the industry has been caught up short and now we find ourselves in a position wherein we could lose primacy in the State of Montana in our drinking water program. In simplified terms, this means that unless the water systems in Montana are regulated by the State of Montana to meet the requirements of the Safe Drinking Water Act and its 1986 Amendments, the State of Montana will no longer regulate its own activities but rather will be regulated by EPA at the National level. Notice has been given by USEPA that the State of Montana must get into compliance or lose its primacy.

Faced with a shortage of staff and a multitude of non-primacy duties, our State Regulatory Agency has not been able to comply with the monitoring required by EPA. Random sampling of some of our water systems has turned up such water contaminants as benzene, radon, lead, trichloroethylene and others which tells us these problems are not just "big city" problems but are also found out here in what we commonly consider as "pristine Montana".

SB 407

A select few of the members of MRWS served on the original committee when Montana took drinking water primacy in 1978. Their knowledge of the Safe Drinking Water Act and the feelings of the systems effected by it at the time, has been invaluable in guiding our organization to its conclusion at the present. As was the feeling of systems when the original act was passed, so it is today that water systems feel the State of Montana should do the following:

(1) Retain primacy

(2) Adapt State statutes to meet only Federal standards as they are promulgated.

(3) Continue those additional services as demanded by the State through user fees: that's i e plans and specification review etc. user fees, not to exceed $2 per year per hookup

(4) Use ~~general fund monies~~ as matching funds for Federal Primacy monies.

(5) Increase the number of FTE's allowed the drinking water program to insure their obligations can be met.

It is the goal of MRWS to see that all Montanans have a safe, sufficient supply of drinking water at all times. It behooves all of us to do our part to insure the safety of the drinking water through-out our State regardless how small or large that system may be. Public health as well as the direction our drinking water industry will take is dependant considerably upon your decisions on Senate Bill 407. The drinking water systems of Montana urge your support of primacy and the drinking water program in Montana.

Thank you.

Sincerely,

Ray

Ray Wadsworth,
MRWS Executive Director

RW/app

EXHIBIT 3
DATE 4-1-91
HB SB 407

April 1, 1991

DHES TESTIMONY ON SENATE BILL 407:
PRESENTED BY: Dan L. Fraser, Water Quality Bureau

The Department of Health and Environmental Sciences supports Senate Bill 407 for the following reasons:

1. The amendments clarify the definition of a public water system (PWS) to indicate one is public if "designed" to be public. This makes the definition consistent with the definition of a public sewer system and with the intent of the law.

2. The bill will give the department the authority to review new public water and sewer systems and major expansions of existing systems in terms of their long-term viability as well as minimum construction standards.

   The department feels this authority is necessary in order to minimize the creation and expansion of small public systems incapable of maintaining economic and technical viability. Non-viable systems will not be able to maintain compliance with state and federal laws, will be unable to ensure the provision of safe drinking water and will be a drain upon government grant and loan programs, technical assistance providers, water users and enforcement programs.

3. The bill provides the department with better enforcement tools including:

   a. Administrative Orders

   b. Administrative Penalties ($500)

   c. Civil Penalties ($10,000)

   These tools are needed because Montana has a rate of non-compliance which is more than double the national average. Most violations are simply due to the failure or refusal of systems to monitor the quality of the water they provide the public and are expected to be corrected by administrative orders and the threat of small penalties. These additional enforcement tools will make the department's enforcement efforts much more effective and efficient and it will no longer be profitable for systems to refuse to comply.

   There are a few cases where the court should have the authority to provide fairly severe penalties. An example might be where the public is put at risk deliberately and

EXHIBIT 4
DATE 4-1-91
HB SB 407

TESTIMONY ON SB 407

MR. CHAIRMAN AND COMMITTEE MEMBERS, MY NAME IS PETE FRAZIER, DIRECTOR ENVIRONMENTAL HEALTH WITH THE CITY-COUNTY HEALTH DEPARTMENT IN GREAT FALLS. IN ADDITION, I SERVED AS A MEMBER OF THE MONTANA PUBLIC WATER SUPPLY TASK FORCE.

I COME BEFORE YOU TODAY IN SUPPORT OF SB 407. FOR THE PAST 14 YEARS, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' WATER QUALITY BUREAU HAS HAD PRIMACY (ENFORCEMENT AUTHORITY) OVER THE FEDERAL SAFE DRINKING WATER ACT. IN 1986, CONGRESS PASSED MAJOR REVISIONS TO THE FEDERAL ACT, WHICH NECESSITATED AN INCREASED STAFFING LEVEL FOR THE WATER QUALITY BUREAU IN ORDER TO MAINTAIN PRIMACY. SHOULD MONTANA LOSE PRIMACY, EPA WILL BECOME THE PRIMARY ENFORCEMENT AUTHORITY OVER PUBLIC WATER SUPPLIES IN MONTANA. IN THE PAST, THE STATE'S ENFORCEMENT POLICY HAS BEEN ONE OF WORKING WITH LOCAL WATER SUPPLIES THROUGH COMPLIANCE SCHEDULES, TECHNICAL ASSISTANCE AND EDUCATION IN AN EFFORT TO ASSIST NON-COMPLYING SYSTEMS TO COME INTO COMPLIANCE, USING STRICT ENFORCEMENT PROCEDURES AS A LAST RESORT ONLY, OR IN CASES WHERE AN IMMEDIATE, EMMINANT PUBLIC HEALTH HAZARD EXISTED. HOWEVER, SHOULD EPA TAKE OVER THE ENFORCEMENT OF THE SAFE DRINKING WATER ACT, ENFORCEMENT WILL BE STRICTLY THAT - ENFORCEMENT AND IMMEDIATE LEGAL ACTION. THERE WILL BE NO TECHNICAL ASSISTANCE, PUBLIC EDUCATION, OR OPERATOR TRAINING.

THE MONTANA PUBLIC WATER SUPPLY TASK FORCE DETERMINED THAT MONTANA SHOULD RETAIN PRIMACY AND BE FUNDED ADEQUATELY TO BE PROPERLY STAFFED TO PERFORM THE NECESSARY DUTIES REQUIRED FOR PRIMACY. FUNDING FOR THESE ADDITIONAL DUTIES MANDATED BY THE FEDERAL GOVERNMENT SHOULD COME THROUGH FEES FOR PLAN REVIEWS OF NEW AND EXPANDING WATER SYSTEMS AND A SMALL ANNUAL CHARGE PER SERVICE CONNECTION.

THE BILL CALLS FOR A $2 PER YEAR PER SERVICE CONNECTION FEE, WHICH EQUATES TO 17¢ PER MONTH PER SERVICE CONNECTION. IN ADDITION, THE BILL PROVIDES FOR AN APPEAL PROCESS SO THAT ANY WATER SYSTEM OWNER OR ENTITY WILL HAVE THE RIGHT FOR INPUT AND DISCUSSION RELATIVE TO THE FEE HE WILL BE ASKED TO PAY.

WE FEEL THIS IS A MOST REASONABLE METHOD TO FUND THIS CRITICALLY IMPORTANT PRO-

GRAM. IN ESSENCE, IF THE STATE LOSES PRIMACY AND EPA TAKES OVER ENFORCEMENT, PUBLIC WATER SUPPLIES COULD FIND THEMSELVES PAYING MUCH MORE DUE TO EPA'S ENFORCEMENT PROCEDURES. FOR THE PROTECTION OF THE PUBLIC HEALTH AND FOR THE BEST INTERESTS OF THE PUBLIC WATER SUPPLIES AND GENERAL PUBLIC THROUGHOUT MONTANA, WE URGE YOU TO GIVE SB 407 A "DO PASS" RECOMMENDATION.

THANK YOU.

EXHIBIT 5
DATE 4-1-91
HB SB 407

SENATE BILL NO. 407
TESTIMONY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS RICHARD A. NISBET, DIRECTOR OF PUBLIC WORKS FOR THE CITY OF HELENA.

I AM REPRESENTING THE CITY OF HELENA, THE MONTANA SECTION OF THE AMERICAN WATER WORKS ASSOCIATION (AWWA) AS NATIONAL DIRECTOR AND THE EXECUTIVE COMMITTEE OF THE MONTANA SECTION OF AWWA. I ALSO WAS ONE OF THE MEMBERS THAT SERVED ON THE MONTANA'S PUBLIC WATER SUPPLY TASK FORCE TO DEVELOP POLICIES FOR THE PUBLIC WATER SUPPLY PROGRAM. I SUPPORT SENATE BILL NO. 407.

AFTER REVIEWING ALL THE OPTIONS THE TASK FORCE MADE THE FOLLOWING CONCLUSIONS:

1. MONTANA'S PUBLIC WATER SUPPLY PROGRAM SHOULD RETAIN EXISTING REGULATORY AND TECHNICAL ASSISTANCE FUNCTIONS.

2. MONTANA'S PUBLIC WATER SUPPLY PROGRAM MUST BE EXPANDED TO INCLUDE REQUIREMENTS OF THE AMENDED SAFE DRINKING WATER ACT AND STATE PRIMACY MUST BE RETAINED.

3. LEGISLATIVE CHANGES MUST BE MADE TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (DHES) TO ASSESS FEES TO SUPPLEMENT FUNDING OF THE PUBLIC WATER SUPPLY PROGRAM.

SENATE BILL NO. 407, AS CURRENTLY BEFORE YOU, WILL PROVIDE THE MEANS BY WHICH DHES CAN IMPLEMENT RECOMMENDATIONS OF THE PUBLIC WATER SUPPLY TASK FORCE. THE METHOD OF RAISING FEES HAS CREATED A CONTROVERSY AMONGST THE LARGE AND SMALL WATER SYSTEMS. HOWEVER, I BELIEVE SENATE BILL NO. 407 IS A REASONABLE COMPROMISE FOR THE STATE TO MAINTAIN IT'S PRIMACY. I URGE YOU TO GIVE FAVORABLE CONSIDERATION TO SENATE BILL NO. 407. WITHOUT THE STATE'S PRIMACY, ENFORCEMENT OF THE SAFE DRINKING WATER ACT WILL BE TAKEN OVER BY THE ENVIRONMENTAL PROTECTION AGENCY WHO WILL HAVE MUCH LESS UNDERSTANDING AND TECHNICAL SUPPORT TO SYSTEMS THAT NEED IT THE MOST.

THANK YOU.

EXHIBIT 6
DATE 4-1-91
~~HB~~ SB 407

Proposed Amendments
to
Senate Bill 407
Third Reading Copy

by
Mountain Water Company

House Natural Resources Committee
April 1, 1991

1. Page 1, line 24, following "HEARING;":

INSERT: "REQUIRING THE PUBLIC SERVICE COMMISSION TO APPROVE AN INCREASE IN A TARIFF FILED BY A PRIVATELY-OWNED PUBLIC WATER SYSTEM TO RECOVER THE COSTS ASSOCIATED WITH THE FEE ASSESSMENT;"

1. Page 11, line 3, following "69-7-111.":

INSERT: "THE PUBLIC SERVICE COMMISSION SHALL, WITHOUT HEARING AND WITHIN 30 DAYS OF THE ASSESSMENT OF A FEE BY THE DEPARTMENT UNDER THIS SECTION, APPROVE TARIFF CHANGES FOR A PRIVATELY-OWNED PUBLIC WATER SYSTEM IN AN AMOUNT WHICH WILL ALLOW THE OWNER TO FULLY RECOVER COSTS ASSOCIATED WITH THE FEES PRESCRIBED UNDER THIS SECTION."

EXHIBIT 7
DATE 4-1-91
HB SB 407

April 1, 1991

TESTIMONY OF BRUCE MCCANDLESS, CITY OF BILLINGS - S.B. 407

The City of Billings opposes S.B. 407 for the following reasons:

1. State regulatory programs should be funded by state taxes collected by the state to benefit all residents of the state.

2. Supporting this philosophy, even the sponsor, Senator Waterman was recently quoted as syaing she is "not a fan of selective taxes to fund the needs of the state."

3. The American Water Works Association states that broad based drinking water regulatory functions should be funded by state general funds. Fees may be used for functions directly related to a specific water supplier.

4. The proposed tax is disproportionate to the benefits. Dept. of Health literature states that the small water systems - 96% of the state - will have the greatest trouble meeting the drinking water standards. Under the formula, the large systems pay for the services, while the small ones receive them.

5. The Dept. of Health has stampeded the Legislature to adopt S.B. 407 as the only way to retain regulatory primacy. The Nat'l. Conference of State Legislatures says that many states are wrestling with meeting E.P.A. standards for primacy. The fact is, no one knows what will happen without this funding because E.P.A. hasn't taken any direct action anywhere in the U.S. to withdraw primacy.

6. Funding from S.B. 407 would expand personnel and contracting by over 200%. The original version of the bill would have added 34 F.T.E. employees. Even if primacy was threatened, it would not likely take this level of expenditure to retain it.

7. Other surrounding states allow and even welcome E.P.A. primacy. Wyoming - water and Idaho - wastewater. No disasterous effects have been attributed to this arrangement, in fact state and local officials in both states are supporting continuation.

8. Nearly $2 million per year will be spent on this state program. Not $1 will be spent on meeting the needs for construction and operating expenses to meet the National drinking water standards.

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL **DATE** 4-1-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE			✓
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL			✓
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 407

DATE 4/1/91 SPONSOR(S) Sen. Waterman - Amend Public Water Supply Act

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Richard A Nisbet	City of Helena - AWWA Mont Sect	X	
Lon Jones	~~DHES~~	X	
Jim Heiser	DHES	X	
Gerald M. Smith	MRWS - AWWA	X	
John W Duncan Sage Creek County water Dis	Sage Creek County Water Dis	X	
Rick Duncan	DHES-Water Quality	X	
Ray Wadsworth	Mt Rural Water	X	
MABLE REDFIELD	Boulder County	X	
Pete Frazier	City-Co. Health Dept Great Falls	L	
BRUCE McCANDLESS	CITY OF BILLINGS		✓
Jim Jensen	MEIC	X	
Kay Norberg	WIFE	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BOB RANEY**, on April 2, 1991, at 12 p.m.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 189

Motion: **REP. FAGG MOVED SB 189 BE CONCURRED IN.**

Motion: **REP. COHEN** moved to amend SB 189.

Discussion: **REP. COHEN** said disposal districts can go deeply in debt and issue bonds for financing themselves without a vote of the people. People expect school districts and local governments to go to a vote of the people for a bond. Disposal districts are given powers not given to any other local government. He reviewed amendment No. 3 to require a vote of the people for bonding. **EXHIBIT 1**

EXECUTIVE ACTION ON SB 407

Motion: **REP. O'KEEFE** moved SB 407 be amended.

Discussion: **REP. O'KEEFE** said Mountain Water Co. proposed the amendment to create an even ground for private and public water companies. **EXHIBIT 7**

REP. FOSTER said this works against rate stability. He opposed implementing the fee without first holding a hearing. The fee set by law would be reflected in the rates.

REP. COHEN said it was his understanding that SB 407 does not require a hearing for the publicly owned utilities, only for privately owned ones. Publicly owned utilities also should be required to hold a hearing.

REP. FOSTER agreed that there should be no difference.

REP. NELSON said more than an issue of fairness is involved. It is a business decision. If Mountain Water has 50 hookups, the company has to come up with a $2 fee per hookup. That amounts to $100,000. The company would probably have to borrow the money on a short-term note at the bank. The issue is the cost of interest. **REP. FOSTER** said that is a good point and that is why interim rate increases are needed.

Vote: Motion to amend SB 407 carried 14-4, with **REPS. KNOX, FOSTER, GILBERT** and **BARNHART** voting no.

Motion: **REP. O'KEEFE MOVED SB 407 BE CONCURRED IN AS AMENDED.**

Motion: **REP. FAGG** moved to further amend SB 407.

Discussion: **REP. FAGG** said that on Page 10, Lines 22-24 make the minimum fee $200, instead of $100, and cap it at $15,000 because several large communities pay for it, but will get no benefits. The result will be fewer dollars for the Department of Health and Environmental Sciences (DHES), but the people who are getting the benefits should be the ones to pay.

REP. FOSTER said a minimum fee of $200 concerns him. Some communities can't afford the $200. He suggested the $100 rate be continued.

REP. FAGG agreed to change his amendment to keep the fee at $100, with a maximum fee of $15,000.

REP. REAM asked what the fiscal impact would be. **Dan Fraser, DHES,** referred to **EXHIBIT 8.** He said the fiscal impact would be approximately $61,000.

REP. O'KEEFE asked if it would cost $100 if a person had a single water hookup and one well. **REP. FOSTER** said there would be a minimum fee of $100.

REP. MEASURE asked how much a bar with its own well pays. **REP. FOSTER** said zero.

REP. GILBERT asked what they get for $100. **REP. FOSTER** said that if contamination occurs, DHES calls or visits the site. They also get annual inspections.

CHAIRMAN RANEY said the residents of Billings pay only 33 cents. Something needs to be done about the minimum charge of $100.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION TO AMEND THE MINIMUM FEE TO $20 AND FOR THERE TO BE A MAXIMUM FEE OF $15,000.

Discussion: REP. O'KEEFE said that with that amendment, the state would lose $170,000. **REP. GILBERT** said only $16,000 would be lost. A fee of $100 is unfair, but $20 is OK.

The committee agreed unanimously to appoint a subcommittee. **REPS. REAM, FAGG** and **O'KEEFE** agreed to work on the bill to solve the fee issue and its fiscal impact.

EXECUTIVE ACTION ON SB 114

Motion: REP. MEASURE MOVED TO RECONSIDER ACTION ON SB 114 AND THAT SB 114 BE TAKEN OFF THE TABLE.

Discussion: REP. MEASURE said his major concern was the effect SB 114 would have on the individuals and what kind of constitutional provisions were added. The U.S. Supreme Court ruled in a West Virginia case that this type of procedure was OK.

Vote: Motion to take SB 114 off the table and reconsider action carried 9-8. **EXHIBIT 9**

Motion: REP. COHEN MOVED SB 114 NOT BE CONCURRED IN.

Discussion: REP. COHEN said that a vote of the people is not the way to go about siting a landfill.

CHAIRMAN RANEY said the location of a landfill has to be determined under provisions of the Megalandfill Siting Act. After sites are proposed, the people have the choice.

REP. COHEN said Montana will someday have landfills large enough to fall within the definition of megalandfill. He asked what the state would do when the proper site is found and the people vote no. He urged the committee to table the bill.

REP. REAM said the referendum can occur before the siting process. He doesn't have problems with the bill.

EXHIBIT 7
DATE 4-2-91
HB SB 407

Proposed Amendments
to
Senate Bill 407
Third Reading Copy

by
Mountain Water Company

House Natural Resources Committee
April 1, 1991

1. Page 1, line 24, following "HEARING;":

INSERT: "REQUIRING THE PUBLIC SERVICE COMMISSION TO APPROVE AN INCREASE IN A TARIFF FILED BY A PRIVATELY-OWNED PUBLIC WATER SYSTEM TO RECOVER THE COSTS ASSOCIATED WITH THE FEE ASSESSMENT;"

1. Page 11, line 3, following "69-7-111.":

INSERT: "THE PUBLIC SERVICE COMMISSION SHALL, WITHOUT HEARING AND WITHIN 30 DAYS OF THE ASSESSMENT OF A FEE BY THE DEPARTMENT UNDER THIS SECTION, APPROVE TARIFF CHANGES FOR A PRIVATELY-OWNED PUBLIC WATER SYSTEM IN AN AMOUNT WHICH WILL ALLOW THE OWNER TO FULLY RECOVER COSTS ASSOCIATED WITH THE FEES PRESCRIBED UNDER THIS SECTION."

EXHIBIT 5
DATE 4-2-91
HB SB 407

SB 407 PROPOSAL

Min. Fee ($100/PWS)

POPULATION	NO. PWS	NO. S.C.	$/S.C./YR RANGE	TOTAL
>50	205	3,376	6.00 - 10.00	20,500
50 - 99	176	4,479	3.00 - 6.00	17,600
100 - 149	77	2,878	2.00 - 3.00	7,700
150 - 7,499	247	66,848	2.00	133,696
7,500 - 11,250	5	16,162	2.00	32,324
>11,250	6	83,663	2.00	167,326
	716	177,406		379,146
NON-COMMUNITY PWS	1,377	NA	100 MIN.	137,700
				516,846

Exhibit 8
4-2-91
SB 407

SB 407 PROPOSAL WITH CAP. @ 7,500

Min. Fee ($100/PWS)

POPULATION	NO. PWS	NO. S.C.	$/S.C./YR RANGE	TOTAL
>50	205	3,376	6.00 - 10.00	20,500
50 - 99	176	4,479	3.00 - 6.00	17,600
100 - 149	77	2,878	2.00 - 3.00	7,700
150 - 7,499	247	66,848	2.00	133,696
7,500 - 11,250	5	16,162	2.00	32,324
>11,250	6	83,663	.33 - 1.00	45,000
	716	177,406		256,820
NON-COMMUNITY PWS	1,377	NA	100 MIN.	137,700
				394,520
				(-122,326)

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL **DATE** 4-2-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRPERSON BOB RANEY**, on April 10, 1991, at 4:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Members Excused: Bob Ream (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SENATE BILL 407

Motion: REP. O'KEEFE MOVED SB 407 BE CONCURRED IN.

Discussion: **REP. O'KEEFE** reviewed the bill and presented amendments. **EXHIBIT 1.** He stated that it is a compromise bill that came out of the study done by Montana's Public Water Supply task force. They worked on this bill for two years. The Senate amended the bill to reduce the funding by one-third. In the amended version, there is a maximum charge of $2.00 per residential hookups and a minimum fee of $100 with no cap for public water supplies.

Motion: **REP. O'KEEFE** moved to adopt amendments to SB 407.

Discussion: **REP. O'KEEFE** stated that a main issue concerns the cap for hookup fees. The city of Billings feels there should be a cap on the hookups so that larger city water systems are not subsidizing the smaller systems. The city of Billings suggested a cap of $15,000, the Senate suggested $7,500, and the subcommittee suggested $40,000. The adoption of the $40,000 cap is amendment #3 of the proposed amendments.

REP. COHEN asked how many communities will be impacted by the adoption of amendment #3. **REP. O'KEEFE** replied one community, the city of Billings. **Donna Jensen, Water Quality Bureau - Water Supply Program,** confirmed **REP. O'KEEFE's** response and added that the city of Billings is the only city that exceeds 20,000 hookups. They have approximately 22,000 hookups. **REP. COHEN** commented that establishment of the cap will save Billings $5,400 immediately. They also will not have to contribute to help other public water supplies. **REP. O'KEEFE** said it will save Billings money for two years because that is how long the fees will stay in place. **REP. COHEN** asked if a termination date is needed. **REP. O'KEEFE** responded that a termination date is not needed because the funds will stay that way unless they are changed in the Legislature. The Department should be able to put the program together and implements it if all the amendments are adopted. If problems develop with their budget due to emergencies they may need to come to the Legislature for more funding.

Vote: Motion to adopt amendment #3 carried with Reps. Wanzenried, Cohen, Barnhart, and Measure voting no.

Discussion: **REP. O'KEEFE** stated that the subcommittee felt that the $100 minimum hookup fee might be high for the commercial customer on the edge of town considering what services they get. Under the proposed program they will get a water inspection worth $55. **Ms. Jensen** explained that, currently, the Department contracts out the county water inspections. It costs $55 to inspect a restaurant. The inspections are conducted a minimum of once every five years. The small water systems, such as trailer parks, are inspected a minimum of every three years for a cost of $55. The Department pays the county for the $55 inspection. This does not include the costs associated with data management, monitoring of the results of the required tests, technical assistance or follow-up studies. **REP. COHEN** asked what happens if they are on surface water. **Ms. Jensen** said surface water supplies are strictly inspected by people from the Department or an engineering contractor paid on an hourly basis. These inspections are done on an annual basis.

Motion: **REP. WANZENRIED** moved to amend the $100 minimum hookup fee to $25.

Discussion: **REP. O'KEEFE** said if the fee is reduced to $25, the

Department won't have enough funding to set up a program that meets the primacy concerns that the federal government has. The federal government will step in and take over the program. The small water users have stated that they would rather deal with state than federal agencies. There is a certain amount of hassle with the public water supply program, however, there are costs associated with protecting the public drinking supply for the citizens. The $100 fee is already the minimum amount necessary in order to fund the program. Those affected by the $100 fee are the commercial enterprises with single hookups that serve water to the public. If the fee is dropped here it will have to be raised somewhere else. An option is to raise the cap and get an additional $5,400 from Billing's fee.

REP. MEASURE stated that it seems the committee is willing to give Billings a break in a situation where they have an opportunity to spread their costs over 100,000 people, but is not willing to give the individual small business operator in a rural area any kind of break. He stated that he supported **REP. WANZENRIED's** amendment and supported removing the cap of $40,000.

REP. ELLISON asked what the federal government would charge if they ran the program. **Jim Melstad, DHES,** replied that he didn't know. They will run their program as they choose and there will be a lack of communication. A $100 fee is the absolute minimum to operate this program. **REP. FAGG** asked how the $100 fee minimum was determined. **Ms. Jensen** responded that the $100 is based on the known cost of $55 for the inspection fee. At this time no fees are charged to do inspections, samples, or sanitary surveys. The state pays the county to do some of these inspections due to our lack of personnel. Data management is needed, as the results must be reported to the federal government. The Department does have people available to do follow-up site inspections. Some systems have problems that require more than one visit. **CHAIR RANEY** said that currently, the fee is $55 every five years. He asked if the proposed fee would be $100 per year or every five years. **Ms. Jensen** replied $100 per year.

REP. FOSTER stated that he supported **REP. WANZENRIED's** amendment. Over a three year period the business or individual would pay $75. Of that, $55 goes for the inspection, and $20 to cover the miscellaneous expenses. **REP. O'KEEFE** said there will be costs to collect the fees. If you lower the fees to individual commercial establishments then fees will have to be raised for other users to keep primacy. **REP. COHEN** stated that fees are difficult and expensive to collect. He suggested that it be funded through the General Fund. Because it appears that is not a viable option, fees should be lowered so as not to hurt small business people. **REP. FAGG** responded that the small to medium water systems owners are the ones getting the technical assistance and they should pay for it. Billings will put in $40,000 to the program and virtually get no benefits. **REP. MEASURE** disagreed and said that all communities benefit from the program. At some point all

communities have submitted expertise and tax dollars to the larger cities. The larger cities should pay extra to develop the public water systems throughout the state as everyone will eventually use them. **CHAIR RANEY** asked the Department what would be the loss to the Department if fees were reduced from $100 to $25. **Mr. Melstad** responded approximately $103,000. **CHAIR RANEY** inquired if the fee was reduced could the state maintain primacy. **Mr. Melstad** said he did not think so but that it was difficult to predict. The new federal requirements may change the number of samples and frequency necessary. **Mr. Melstad** added that there are approximately 212 new sites, schools and some businesses, that samples will be required which take more time. The department requests that these places not be allowed the minimum fee and instead be charged more. **CHAIR RANEY** asked how these are be classified separately in the bill so the bill could be amended requiring them to pay the $100 fee. **Mr. Melstad** responded that they are not broken out in the bill because the Department proposed a $100 minimum. The group of people involved are referred to as "non-transient". **Mr. Melstad** explained that "transient noncommunity systems" are systems such as bars and restaurants. There are about 1000 of these systems. "Non-transient" systems include schools and trailer parks.

REP. GILBERT asked what the fee covers. **Mr. Melstad** responded that the fee covers the cost of sanitation, field work such as checking the well, sampling, water system inspection and follow-ups visits. The state pays the county for these services. The business or individual pays for the actual cost of the test which is $6.50 and $10.00 for samples. **REP. GILBERT** stated that it appears the Department charges the person twice: once through the annual fees and then for any work done. **Mr. Melstad** responded that the Department does not charge the owner for services the county has already charged them for. **REP. GILBERT** asked how much of the funding is from the federal government. **Mr. Melstad** answered 83% is from federal funds and 17% is from the Resource Indemnity Trust (RIT). **REP. GILBERT** asked why there is a need for more funding since there is federal funding, RIT money, and the $6.50 or $10.00 collected from testing. **Mr. Melstad** said there is an abundance of follow-up work with sampling and additional field work. The new federal requirements are very complex that it requires more of our time in the field with county people. The Department needs these fees to build the program so it is not lost to the federal government.

CHAIR RANEY asked if the federal government will contribute more money since they are requiring additional work. **Mr. Melstad** replied that the Department's federal grant should increase by approximately 5%.

REP. WANZENRIED withdrew his motion.

Motion: CHAIR RANEY MADE A SUBSTITUTE MOTION THAT THE $25 APPLY TO THE TRANSIENT NONCOMMUNITY WATER SYSTEMS.

Paul Sihler, Environmental Quality Council staff, explained that the transient noncommunity water system serves 25 or more people, or ten or more service connections per day for at least 60 days of the year and serves a transient population such as bars and restaurants. The non-transient noncommunity are places such as schools and business where people come but leave at night. **CHAIR RANEY** said the $25 will cover the people that everyone is concerned about, the small business owner such as a bar owner that has his own well. He asked what type of businesses are non-transient noncommunity. **Mr. Melstad** responded businesses where there is at least 25 employees, such as factories. **CHAIR RANEY** stated that by adopting his amendment, 1,100 single water users will be dropped out and 200 that have 25 or more employees or daily participants will be included.

Vote: Motion to adopt Chair Raney's substitute amendment carried with Reps. Toole, Brooke, O'Keefe, Raney, Fagg and Hoffman voting no.

Discussion: **REP. RANEY** stated that adoption of that amendment resulted in a cut of approximately $75,000 from the bill. **REP. O'KEEFE** read amendment #4. **EXHIBIT 1**

Motion: **REP. O'KEEFE** moved to adopt amendment #4.

Discussion: **CHAIR RANEY** stated that if amendment #4 is not adopted the ground water assessment program will die. The bill to provide ground water assessment funding died in taxation. **REP. BARNHART** asked if the people of Billings will benefit from the ground water assessment program. **REP. O'KEEFE** said yes. **REP. FAGG** responded that Billings does not get any of its water from ground water. They will only benefit from it when they start using a ground water system. **REP. GILBERT** said all surface water is affected by ground water. **REP. O'KEEFE** added that the majority of the systems are ground water systems. **REP. MEASURE** suggested to alleviate the funding problem, that an additional 25 cent charge/hookup be added and to remove the cap. **REP. O'KEEFE** stated that he supported the 25 cent charge but opposed removing the cap.

Motion: **REP. MEASURE MADE A SUBSTITUTE MOTION TO CHARGE 25 CENTS PER HOOKUP.**

Discussion: **CHAIR RANEY** said this motion would change the fee from $2 per hookup to $2.25. He asked how much money would that raise. **Mr. Melstad** replied approximately $45,000. **CHAIR RANEY** commented that $45,000 is what is needed for the groundwater program. **REP. ELLISON** emphasized that the groundwater assessment study is extremely important. It is important to get it funded. **REP. O'KEEFE** asked if the fee of $25 would increase to $25.25. **REP. MEASURE** said yes. **REP. FOSTER** asked if the extra 25 cents would go to the groundwater assessment program. **REP. MEASURE** replied yes. **CHAIR RANEY** clarified that the 25 cents would be added to all the fees. The money raised would go to fund SB 94,

the groundwater assessment program. **REP. O'KEEFE** said amendments #4 and #5 will have to be rewritten because they take 25 cents out of the $2. The substitute amendment would put 25 cents on top of the $2. **REP. RANEY** asked if the additional charge of 25 cents should be terminated on October 1, 1993. **REP. MEASURE** replied yes. **REP. GILBERT** said that the committee may need to reconsider the $25 fee and increase it to $50.

Motion/Vote: **REP. RANEY MADE A SUBSTITUTE MOTION TO ADD 25 CENTS TO THE SERVICE CHARGE WITH A TERMINATION DATE OF OCTOBER 1, 1993.** Motion passed unanimously.

Motion/Vote: **REP. GILBERT MOVED TO RECONSIDER ACTION WHICH LOWERED THE MINIMUM HOOKUP FEE FROM $100 TO $25.** Motion carried unanimously.

Motion/Vote: **REP. GILBERT** moved to change the hookup fee for transient noncommunity users from $100 to $50. Motion carried unanimously.

Motion/Vote: **REP. BARNHART MOVED TO RECONSIDER ACTION ON ESTABLISHING A CAP.** Motion carried 9 - 8 with Reps. O'Keefe, Gilbert, Ellison, Nelson, Fagg, Foster, Knox, and Southworth voting no.

Motion/Vote: **REP. BARNHART MOVED TO REMOVE CAP.** Motion carried 9 - 8. **EXHIBIT 2**

Discussion: **REP. BOHARSKI** explained his proposed amendments. **EXHIBIT 3.** He stated that under current law, several districts can expand but to hook up they need to be contiguous. These amendments address the problem of systems hooking up. **REP. MEASURE** asked **REP. BOHARSKI** if he is referring to a specific problem. **REP. BOHARSKI** responded that in Lakeside and near Summers the line is already in but they aren't able to hook up. **CHAIR RANEY** asked the Department if they had any problems with this. **Mr. Melstad** responded no.

Motion: **REP. O'KEEFE** moved to adopt the **REP. BOHARSKI's** amendments.

Discussion: **Mr. Melstad** explained that the amendment would allow someone who has not been in an existing district to be served by that district without being annexed into the district. **REP. BOHARSKI** agreed with that interpretation of the intent. **REP. ELLISON** asked if it would create problems with someone hooking into the sewer without paying a fee. **REP. O'KEEFE** said they have to pay a fee. They can sell it.

Vote: Motion passed unanimously.

Motion: **REP. FAGG MOVED TO RECONSIDER ACTION AND ESTABLISHING A CAP.**

Discussion: **REP. MEASURE** said its a terrible idea to put the cap back on. Billings would be the only city to benefit. The amount of money Billings would be required to donate is not substantial to the city.

Vote: Motion failed 7 - 10. **EXHIBIT 4**

Motion/Vote: **REP. O'KEEFE MOVED SB 407 DO PASS AS AMENDED.** Motion carried 15-2 with Reps. Fagg and Foster voting no and Rep. Ream absent.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 43

Motion: **REP. FOSTER MOVED HJR 43 DO PASS.**

Motion: **REP. COHEN** moved to amend HJR 43.

Discussion: **REP. COHEN** explained his proposed amendments. He proposed that on page 1, line 14, insert "at times"; page 1, line 20 - 23, change the language to read "whereas projected timber supply forecasts indicate that existing timber harvest levels cannot be sustained in the near future"; page 1, line 24, change "would" to "could" bring economic hardships to western Montana. **CHAIR RANEY** commented that **REP. REAM** has some amendments that would strike lines 20 through 23. **REP. COHEN** responded that his amendments would take care of **REP. REAM's** concerns and accomplish additional tasks.

Vote: Motion to adopt **REP. COHEN's** amendment carried 13 - 5 with Reps. Hoffman, Foster, Gilbert, Ellison and Knox voting no.

Discussion: **REP. COHEN** proposed to adopt the following amendment: on page 2, line 5 and line 9 strike "sustained yield" and insert "sustainable". This amendment will suggest that others resources are considered besides just the timber supply. **REP. ELLISON** said it should read " sustainable yield" not sustainable management.

Motion/Vote: **REP. GILBERT MADE A SUBSTITUTE MOTION TO TABLE HJR 43.** Motion failed 8 - 9. **EXHIBIT 5**

Discussion: **REP. COHEN** proposed to adopt the following amendment: on page 2, line 12 and 22 and in the title, strike "sustained yield" and insert "sustainable management"; and on page 2, line 16 strike "the growth and harvest of timber" and insert "forest productivity". He explained that the amendments would make the bill consistent with HJR 14 and broaden the scope of the study from just timber to sustained yield on the land.

Motion/Vote: **REP. COHEN** moved to adopt the amendments. Motion carried 11 - 5. **EXHIBIT 6**

EXHIBIT 1
DATE 4-10-91
HB SB 407

Amendments to Senate Bill No. 407
Third Reading Copy

Requested by Rep. O'Keefe
For the Committee on Natural Resources

Prepared by Gail Kuntz
April 9, 1991

1. Title, page 2, line 4.
Following: "~~ACT;~~"
Strike: "AND"
Insert: "ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER ASSESSMENT ACCOUNT;"

2. Title, page 2, line 6.
Following: "~~DATE~~"
Insert: "; AND PROVIDING A TERMINATION DATE"

3. Page 10, line 24.
Following: "$100"
Insert: "and the maximum fee is $40,000"

4. Page 11, line 12.
Following: "[section 8]"
Insert: "[, except that $45,000 must be deposited each fiscal year in the ground water assessment account, established by [section 4 of Senate Bill No. 94], within the state special revenue fund]"

5. Page 19, line 9.
Following: line 8
Insert: "NEW SECTION. **Section 12. Termination.** The bracketed portion of [section 4(4)] terminates October 1, 1993."

DATE 4-10-91
~~HB~~ SB 407

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 4-10-91 **BILL NO.** SB 407 **NUMBER** 1

MOTION: to remove cap

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	—	—
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH		✓
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	9	8

motion carried

EXHIBIT 3
DATE 4-10-91
HB SB 407

Amendments to Senate Bill No. 407
Third Reading Copy

Requested by Rep. Boharski
For the Committee on Natural Resources

Prepared by Gail Kuntz
April 10, 1991

1. Title, line 24.
Following: "HEARING;"
Insert: "PROVIDING THAT LOCAL SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT;"

2. Title, page 2, line 5.
Following: "SECTIONS"
Insert: "7-13-2218,"

3. Page 18, line 24.
Following: line 23
Insert: "**Section 11.** Section 7-13-2218, MCA, is amended to read:

"7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district.""

Renumber: subsequent section

EXHIBIT 4
DATE 4-10-91
~~HB~~ SB 407

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 4-10-91 **BILL NO.** SB 407 **NUMBER** 2

MOTION: to reconsider action that removed the caps

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT	✓	
REP. BEN COHEN		✓
REP. ORVAL ELLISON	✓	
REP. BOB REAM	Absent	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE		✓
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL		✓
REP. RUSSELL FAGG	✓	
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX	✓	
REP. BRUCE MEASURE		✓
REP. JIM SOUTHWORTH		✓
REP. HOWARD TOOLE		✓
REP. DAVE WANZENRIED		✓
REP. BOB RANEY, CHAIRMAN		✓
TOTAL	7	10

motion failed

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL **DATE** 4-10-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM			✓
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

HOUSE STANDING COMMITTEE REPORT

April 11, 1991

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 407 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 24.
Following: "HEARING;"
Insert: "PROVIDING THAT LOCAL SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT;"

2. Title, page 2, line 4.
Following: "~~ACT;~~"
Strike: "AND"
Insert: "ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER ASSESSMENT ACCOUNT;"

3. Title, page 2, line 5.
Following: "SECTIONS"
Insert: "7-13-2218,"

4. Title, page 2, line 6.
Following: "~~DATE~~"
Insert: "; AND PROVIDING A TERMINATION DATE"

5. Page 4, line 24.
Following: line 23
Insert: "(2) "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents."
Renumber: subsequent subsections

6. Page 7, line 6.
Following: line 5
Insert: "(16) "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis."

7. Page 10, line 22.
Following: "THAN"
Insert: "$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than"

8. Page 10, line 24.
Following: "100"
Insert: ", except that the fee for a transient noncommunity water system is $50"

9. Page 11, line 12.
Following: "[section 8]"
Insert: "[, except that $45,000 must be deposited each fiscal year in the ground water assessment account, established by [section 4 of Senate Bill No. 94], within the state special revenue fund]"

10. Page 15, line 6.
Following: "account"
Strike: ", all"

11. Page 15, line 7.
Following: "assessed"
Strike: "and"
Insert: ","
Following: "collected"
Insert: ", and allocated"

12. Page 18, line 24.
Following: line 23
Insert: "Section 11. Section 7-13-2218, MCA, is amended to read:

"7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district.""
Renumber: subsequent section

13. Page 19, line 9.
Following: line 8
Insert: "NEW SECTION. Section 13. Termination. The bracketed portion of [section 4(4)] terminates October 1, 1993."

SENATE BILL NO. 407

INTRODUCED BY WATERMAN, O'KEEFE, J. RICE, HARPER, GERVAIS, MAZUREK

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTRATIVELY ENFORCE THE LAWS PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION OF APPROVAL ISSUED UNDER THOSE LAWS; PROVIDING FOR ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS; PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING; PROVIDING THAT LOCAL SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT; ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO RECEIVE REVENUES FROM FEES, ADMINISTRATIVE PENALTIES, AND CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ~~ESTABLISHING A SANITATION IN SUBDIVISIONS SPECIAL REVENUE ACCOUNT TO RECEIVE REVENUES FROM FEES RECEIVED PURSUANT TO THIS ACT;~~ ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER ASSESSMENT ACCOUNT; ~~AND~~ AMENDING SECTIONS 7-13-2218, 69-7-111, 75-6-102, 75-6-103, 75-6-104, 75-6-111, AND 76-4-105, MCA; ~~AND PROVIDING AN EFFECTIVE DATE~~; AND PROVIDING A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is provided for this bill because rulemaking authority is delegated to the board of health and environmental sciences to prescribe procedures for administrative enforcement actions undertaken by the department of health and environmental sciences in administering the public water supply laws, as provided in Title 75, chapter 6, and to develop a fee schedule to enable the department to recover costs in administering these laws. Rulemaking authority is also delegated to the department to develop fees to pay for costs of reviewing plats and subdivisions under the laws related to sanitation in subdivisions, as provided in Title 76, chapter 4. IT IS THE

REFERENCE BILL
AS AMENDED

INTENT OF THE LEGISLATURE THAT THE RULES ESTABLISH A REASONABLE FEE SCHEDULE THAT APPROXIMATES THE DEPARTMENT'S ACTUAL AND NECESSARY COSTS.

The legislature anticipates that the department will expand its enforcement activity in order to address ongoing and increasing health problems with public water supply systems and public sewage systems in Montana. In undertaking this effort, the legislature expects that the department will have the option to pursue administrative enforcement as a means of expediting and encouraging compliance with Title 75, chapter 6. Nonetheless, it is the department's duty to clearly inform each violator of:

(1) the nature of the action taken against it;

(2) what the department requires to resolve the matter; and

(3) what legal avenues are available to the violator if he desires to contest the matter.

THE LEGISLATURE RECOGNIZES THAT AN ECONOMIC HARDSHIP MAY BE IMPOSED ON A PUBLIC WATER SUPPLY SYSTEM IN ORDER FOR THAT SYSTEM TO BE BROUGHT INTO COMPLIANCE WITH STATE AND FEDERAL PUBLIC WATER SUPPLY LAWS AND THAT THIS HARDSHIP MAY BE FURTHER INCREASED BY THE LEVYING OF ADMINISTRATIVE AND CIVIL PENALTIES FOR NONCOMPLIANCE. IT IS THE INTENTION OF THE LEGISLATURE THAT THE DEPARTMENT ADOPT RULES THAT ESTABLISH A PROCEDURE FOR THE PROGRESSIVE ENFORCEMENT OF THIS ACT IN

WHICH THE LEVYING OF ADMINISTRATIVE AND CIVIL PENALTIES IS A FINAL ACTION. THE DEPARTMENT MAY ADOPT RULES THAT ALLOW FOR THE BYPASS OF THE ENFORCEMENT PROCEDURES AND THE IMMEDIATE ASSESSMENT OF PENALTIES IF SPECIFIC CIRCUMSTANCES WARRANT THIS ACTION.

The rules also require the board of health and environmental sciences to develop fees for recovery of costs incurred by the department in delivering services to persons who own or operate or intend to own or operate a public water supply system or public sewage system. These costs include costs associated with review of engineering plans and specifications, inspections, and general assistance. To assist the board in developing these rules, the department shall prepare and submit to the board a detailed estimate of projected costs associated with these services for fiscal years 1992 and 1993. The board shall develop a fee schedule that will provide revenues that are commensurate with the projected costs. A similar approach should be used by the department in developing rules setting new fees for review of plats and subdivisions under 76-4-105.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-6-102, MCA, is amended to read:

"75-6-102. **Definitions.** As used in this part, unless the context clearly indicates otherwise, the following

definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "COMMUNITY WATER SYSTEM" MEANS ANY PUBLIC WATER SUPPLY SYSTEM THAT SERVES AT LEAST 10 SERVICE CONNECTIONS USED BY YEAR-ROUND RESIDENTS OR REGULARLY SERVES AT LEAST 25 YEAR-ROUND RESIDENTS.

~~(2)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

~~(3)~~(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~(5) "Drainage" means rainfall, surface, and subsoil water.

~~(5)~~(6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(6)~~(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

~~(7)~~(8) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead

animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(8)~~(9) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

~~(9)~~(10) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(10)~~(11) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

~~(11)~~(12) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

~~(12)~~(13) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

~~(13)~~(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

~~(14)~~(15) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(16) "TRANSIENT NONCOMMUNITY WATER SYSTEM" MEANS ANY PUBLIC WATER SUPPLY SYSTEM THAT IS NOT A COMMUNITY WATER SYSTEM AND THAT SERVES PERSONS ON A TRANSIENT BASIS."

Section 2. Section 75-6-103, MCA, is amended to read:

"**75-6-103. Duties of the board.** (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards

concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in [section 4], for services rendered by the department ~~in conducting inspections~~;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(g) the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

~~(g)~~(h) the collection and analysis of samples of water used for drinking or domestic purposes;

~~(h)~~(i) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this

part; and

(j) administrative enforcement procedures and administrative penalties authorized under this part; and

~~(i)~~(k) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 3. Section 75-6-104, MCA, is amended to read:

"**75-6-104. Duties of department.** The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of assuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with

reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in [section 4], for services ~~rendered---in---analyzing--water--and--conducting inspections-to-cover-costs-of-the-service~~ and deposit the fees collected in the ~~state~~ public drinking water special revenue fund ~~for--use--by--the--department~~ established in [section 8];

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary

surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this part."

NEW SECTION. **Section 4.** **Board to prescribe fees -- OPPORTUNITY FOR APPEAL.** (1) The board shall by rule prescribe fees to be assessed annually by the department on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system ~~must be based on the number of connections~~ IS NO MORE THAN $2.25 FOR EACH SERVICE CONNECTION TO THE PUBLIC WATER SUPPLY SYSTEM FOR THE BIENNIUM BEGINNING JULY 1, 1991, AND ENDING JUNE 30, 1993, AND THEREAFTER IS NO MORE THAN $2 FOR EACH SERVICE CONNECTION to the public water supply system, although the minimum fee for any system is $100, EXCEPT THAT THE FEE FOR A TRANSIENT NONCOMMUNITY WATER SYSTEM IS $50.

(2) PUBLIC ~~OR PRIVATE~~ WATER SUPPLY SYSTEMS IN A MUNICIPALITY MAY RAISE THE RATES TO RECOVER COSTS ASSOCIATED WITH THE FEES PRESCRIBED IN THIS SECTION WITHOUT THE PUBLIC HEARING REQUIRED IN 69-7-111.

~~(2)~~(3) The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The

fees must be commensurate with the cost to the department of reviewing the plans and specifications.

~~(3)~~(4) Fees collected pursuant to this section must be deposited in the public drinking water special revenue fund established in [section 8][, EXCEPT THAT $45,000 MUST BE DEPOSITED EACH FISCAL YEAR IN THE GROUND WATER ASSESSMENT ACCOUNT, ESTABLISHED BY [SECTION 4 OF SENATE BILL NO. 94], WITHIN THE STATE SPECIAL REVENUE FUND].

(5) (A) THE DEPARTMENT SHALL NOTIFY THE OWNER OF A PUBLIC WATER SUPPLY SYSTEM IN WRITING OF THE AMOUNT OF THE FEE TO BE ASSESSED AND THE BASIS FOR THE ASSESSMENT. THE OWNER MAY APPEAL THE FEE ASSESSMENT IN WRITING TO THE BOARD WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

(B) AN APPEAL MUST BE BASED ON THE ALLEGATION THAT THE FEE IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY NOT BE BASED ONLY ON THE FEE SCHEDULE ADOPTED BY THE BOARD.

(C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED, IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE PROVIDED FOR IN SUBSECTION (5)(A).

Section 5. Section 75-6-111, MCA, is amended to read:

"**75-6-111. Appeal from rule or standard -- injunction to require compliance.** (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in [section 6]. While the appeal is pending, the

rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in [section 7]."

NEW SECTION. **Section 6. Administrative enforcement.** (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time, which must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to

75-6-104, 75-6-113, or [section 7].

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or [section 7].

(6) An action initiated under this part may include an administrative penalty not to exceed ~~$1,000~~ $500 for each day of violation. Administrative penalties collected under this section must be deposited in the public drinking water special revenue fund established in [section 8].

(7) THE CONTESTED CASE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, PROVIDED FOR IN TITLE 2, CHAPTER 4, PART 6, APPLY TO A HEARING UNDER [SECTION 4] OR THIS SECTION.

NEW SECTION. **Section 7. Civil penalty.** (1) A person who violates this part or a rule, order, or condition of approval issued under this part is subject to a civil penalty not to exceed $10,000.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) Civil penalties collected pursuant to this section must be deposited in the public drinking water special revenue fund established in [section 8].

NEW SECTION. **Section 8. Public drinking water special revenue fund.** (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102. There are established in the public drinking water special revenue fund an operator training account and a public drinking water program account.

(2) There must be credited to:

(a) the operator training account all administrative

and civil penalties collected under [sections 6 and 7]; and

(b) the public drinking water program account~~,~~ ~~all~~ revenues from fees assessed ~~and~~, collected, AND ALLOCATED pursuant to [section 4].

(3) Funds from the operator training account may be used only to finance public water supply system and public sewage system operator training programs.

(4) Funds from the public drinking water program account may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

Section 9. Section 76-4-105, MCA, is amended to read:

"**76-4-105. Lot fees -- general fund support.** (1) The department shall adopt rules setting forth fees~~,~~ that do not ~~to~~ exceed ~~$40 per parcel, for services rendered in the review of~~ actual costs to the department in reviewing plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the ~~state general fund sanitation in subdivisions special revenue account established in [section 10]~~ STATE GENERAL FUND or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but

not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees between the local governing body and the ~~state--general--fund~~ sanitation-in-subdivisions-special revenue-account-established-in-~~[section--10]~~ STATE GENERAL FUND, as provided in 76-4-128. When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, distribute the lot fees according to the fee schedule adopted under this section.

(3) When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of $5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs.

(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made

for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(5) Costs of implementing this part must be paid from the state general fund as provided by legislative appropriation ~~and--from--the--sanitation--in--subdivisions special-revenue-account-established-in-[section-10]~~."

~~NEW-SECTION.--Section-10.--Sanitation--in---subdivisions special--revenue--account.---(1)--There--is--a--sanitation-in subdivisions--special--revenue--account--within--the---state special-revenue-fund-established-in-17-2-102.~~

~~(2)--There---must--be--credited--to--the--sanitation--in subdivision-special-revenue-account-all-fees-collected-under 76-4-105-and-all-penalties-collected-under-76-4-109.~~

~~(3)--Funds-from-the-sanitation-in--subdivisions--special revenue--account-may-be-used-only-to-pay-department-costs-in reviewing-plats-and-subdivisions.~~

SECTION 10. SECTION 69-7-111, MCA, IS AMENDED TO READ:

"**69-7-111. Municipal rate hearing required -- notice.** (1) ~~If~~ Except as provided in [section 4], if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a

newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

SECTION 11. SECTION 7-13-2218, MCA, IS AMENDED TO READ:

"7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary

sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference

with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district."

NEW SECTION. **Section 12.** Codification instruction. (1) [Sections 4, 6, 7, and 8] are intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [sections 4, 6, 7, and 8].

~~(2) [Section 10] is intended to be codified as an~~

~~integral part of Title 76, chapter 4, and the provisions of Title 76, chapter 4, apply to [section 10].~~

~~NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 1991.~~

NEW SECTION. **SECTION 13.** TERMINATION. THE BRACKETED PORTION OF [SECTION 4(4)] TERMINATES OCTOBER 1, 1993.

-End-